

Mr. Appleton from Thom

PARTICULARS
OF THE
CAPTURE
OF THE
SHIP OLIVE BRANCH,
LADEN WITH A
CARGO OF ARMS, &c.
THE PROPERTY OF
MAJOR-GENERAL IRA ALLEN,
DESTINED FOR SUPPLYING THE
MILITIA OF VERMONT,
AND CAPTURED BY
His Britannic Majesty's Ship of War,
AUDACIOUS:

TOGETHER WITH THE
Proceedings and Evidence before the High Court of
Admiralty of *Great Britain*.

VOL. I.

By IRA ALLEN, Esq.
Of VERMONT, in the United States of AMERICA,
THE CLAIMANT IN THIS CAUSE.

London :

PRINTED BY J. W. MYERS, NO. 2, PATERNOSTER ROW,

1798.

3.2



The Gift of
John J. Appleton, Esq.
of Paris,
Rec^d Sept 15. 1840.

CONTENTS.

A.	Page
ADMIRALTY Court - - -	90
Allen, Ira General, Reasons for Printing -	1
defamed in Newspapers - - -	3
vindicated in Morning Post - - -	5
defamed in Centinel - - -	11
Cargo stated in Olive Branch - - -	13
Passport of Governor Chittenden - - -	15
Views in his Tour to Europe - - -	21
Letter at Paris to the Officers of Vermont - - -	30
Claim of the Cargo - - -	74
Letter and Proposals to Captain Gould - - -	75
to the Ambassador, Mr. King - - -	76
to ditto - - -	85
Case stated to ditto - - -	77
Claim on Bail - - -	96
Recapitulation of the Evidence - - -	97
Proposal to send the Arms to Mr. Jay - - -	100
for a Canal to the Duke of Portland - - -	104
his Case stated for his Counsel - - -	111
Affidavit for a Mandamus - - -	114
Examination at Portsmouth - - -	124
Claim, on Oath, at Doctors' Commons - - -	137
Oath on the Request of Governor Chittenden - - -	144
Allegation read in Court - - -	151
Summary History of Vermont - - -	918
Address to Enemies of the Canal - - -	83

CONTENTS.

vi
Page

Allen's Letter to Governor Chittenden	- - -	374
Ditto to four Members of Congress	- - -	196
Ditto to ditto	- - -	199
Ditto to ditto	- - -	378
Ditto to ditto	- - -	387
Ditto to ditto	- - -	382
Arnold, Doctor, Plea, December 12, 1797	- - -	176
ditto, June 29, 1797	- - -	299
Appeals, Court of	- - -	
B.		
Bryant, William, Examination	- - -	44
Buckley, Joseph, ditto	- - -	56
C.		
Chittenden, Governor, Passport to General Allen	- - -	15
Affidavit	- - -	16
Certificate to Miller and Smith	- - -	83
Congress Militia Act	- - -	88
Contract between Petiet and Allen	- - -	27
Court of Admiralty	- - -	90
King's Bench	- - -	122
Appeals	- - -	
E.		
Erskine, Mr. Plea for Mandamus	- - -	122
Ditto before the Lords of Appeal	- - -	
Eyre, Robert, Major, Deposition	- - -	25
Letter to Mr. Slade	- - -	271
G.		
Goldbourn, Mr. Deposition	- - -	42
Graham, Colonel, ditto	- - -	19
Graham, Major, ditto	- - -	20
Grenville, Lord, Note to Mr. King	- - -	103

CONTENTS.

H.

	Page
Hefeltine, Mr. Notice to Mr. Slade	148
prayed Condemnation	149

K.

King, Rufus, Esq. Certificate	83
Letter to Lord Grenville	101
King's-Bench Court	122

L.

Lawrence, Dr. Plea, December 12, 1797	167
June 21, 1797	230
June 29	264
July 5	337
Ditto, Court of Appeal	

M.

Marriot, Sir James, curious Speech	184
his Dialogue, &c.	248
ditto	325
his Doubts and Suspicions	362

N.

Nicholls, Dr. Plea and Report	149
Plea, December 12, 1797	170
June 29	273
July 5, on Proof	328
July 5, full Proof	242
Ditto, Court of Appeal	

P.

Parliament, Act of, about Bail	94
Peters, Rev. Dr. Deposition	23
Phelps, Oliver, Esq. ditto	38
Putnam, Jesse, Esq. ditto	35

CONTENTS

R.

	Page
Robinson, Mr. John, Deposition	66

S.

Scott, Mr. Isaac, Deposition	40
Scott, Sir William, Plea, December 12, 1797	161
June 21	205
June 29	254
July 5	329
Slade, Robert, Esq. further Evidence	90
of Papers, marked A, B, C, D, E	117
produced an Allegation	148
Certificate about Hefeltine	149
protested against the Sentence	192
Certificate of Minutes	193
Smith, Dr. Nathan, Deposition of	31
Smith and Miller, Esqrs. Certificate	84
Spafford, General, Deposition	18

T.

Thorn, Stephen, Esq. Deposition	32
Treaty of Lord Grenville and Mr. Jay	329

*To the Merchants and Manufacturers of Great Britain,
and those with whom I have Business in the United
States of America.*

GENTLEMEN,

A LONG and unexpected suit in the High Court of Admiralty of Great Britain, which rendered my personal attendance necessary, has, in a great measure, deranged my business both in Europe and America. In the interval my character has been wantonly attacked in the public papers in both hemispheres by anonymous writers. Several editors of the London newspapers having declined to publish an answer to a defamatory article, which appeared in their respective prints, which, if not contradicted, may tend very much to injure my character and business. Under this impression, I feel it necessary to publish the following plain statement of facts, which I trust will serve as an apology for not carrying my commercial pursuits into execution; and for the omission of my official duties and domestic concerns, &c. in the State of Vermont, Boston, and

B

New

New York. But you may rest assured as soon as I can obtain a final determination of my cause, I shall punctually attend to the several mercantile arrangements. To evince, in the first instance, the necessity of the present measure, I shall, in the outset, lay before you two defamatory articles, with the answer to the first, as it appeared in the Morning Post.

I am, gentlemen, &c.

IRA ALLEN.

London, Oct. 24, 1797.

The following Article appeared in several of the London Prints in September, 1797.

OUR Readers will remember the capture of the ship Olive Branch last winter, laden with 20,000 stand of arms and equipage complete. She was from France; but her destination unknown, and her designs mysterious. The opinion entertained in this country at the time was, that these arms were intended for the disaffected in Ireland. By advices from America, where the original contracts for her lading have recently appeared, the mystery is thought to be unravelled, and late occurrences seem to justify the conclusion. The following are the facts stated on the occasion:—

The contracts for 20,000 stand of arms, with all their accompaniments complete, 20 pieces of brass cannon, tents, &c. were made by *Ira Allen*, of *Vermont*, with the French Minister of War, and said to be for the use of that State. On enquiry, it appears that the Governor of Vermont has never authorized any purchase of arms, nor is there any law of the State under which *Ira Allen* could act.

It follows that this pretence is only a cover for some other design. On examining the contracts, it appears that the price stipulated is scarcely one-fourth of the value of the articles, and Allen was to pay for them by instalments at different periods, the last of which is to be many years hence. This is a genuine state of facts. Let us compare these facts with the attempt of *Adet*, by Major *M'Lean*, and other emissaries, to excite the *Canadians* to revolt, and we shall not hesitate a moment to believe the arms and artillery were destined for *Canada*; and it is a fact that Colonel *Lyon* has made and sent to *Canada* large quantities of cannon-balls, &c. and this, by the bye, will unfold his motives in opposing that part of the bill for prohibiting the exportation of powder, arms, and ammunition at the late session of Congress. Indeed there can be no doubt that all these preparations were intended to aid the French in the conquest of *Canada*. But this is not all. The conspiracy was more deep and extensive. The design was to extend the French conquests to the *Mississippi*, and down to the *Gulph of Mexico*. To gain a plausible pretext for attacking the Spanish settlements as well as *Canada*, agents were employed to hatch a conspiracy on the part of the British, and obtain their countenance to an attack on *Louisiana* and *Florida*. This would have been disclosed by the men who formed the scheme, at the moment it should have been found necessary to begin their operations, and then the British plot would have been alledged as the

the justification of an attack on Canada, while an army of 5 or 6000 Frenchmen, actually assembled at New Orleans, would have aided the Spaniards to repel the Americans, who are endeavouring to run the line in that country, and then take possession of that country for France. It is further thought that *Allen's* plot was connected with that of *Blount's*, a member of Congress, whose impeachment has been determined on by the American legislature, but who has disappeared.

To the EDITOR *of the* MORNING POST, &c.

SIR,

HAVING read in your paper of the 19th ult. an article replete with errors*, and malignant falsehoods, maliciously calculated to injure the reputation and interest of General Allen, of the State of Vermont, in the United States of America, and in its consequence to interrupt the harmony which subsists betwixt Great Britain and that country, should have passed over that paltry fabrication with contempt and silence, as the character of General Allen is placed on an eminence far beyond the shafts of malevo-

* It did not originate in the MORNING POST, but was copied from an Evening Paper.

lence. I say I should have passed it over in silence, if I had not heard some gentlemen speak of that affected mysterious statement in such a manner as to evince that they were not acquainted with the insidious motives of the impotent scribbler, who might well be represented in a print shop with a dagger in one hand, and a fire-brand in the other in the dead of night. Out of respect, however, to such gentlemen, and in justice to the character of an insulted stranger, I request your insertion of the following plain statement of facts in your impartial Paper, which, I trust, will have their due weight with a candid and discerning Public, and place the conduct of General Allen in a clear point of view with respect to the arms purchased of the French Directory, for the sole use of the militia of Vermont, and the alleged plots against the repose of this country.

In 1795, Ira Allen, General and Commandant of all the Militia in the State of Vermont, proposed to visit Europe; Thomas Chittenden, Governor of that State, by writing under his hand and the seal of the State, commissioned and requested the General to purchase arms in Europe for the use of the Vermont Militia, as a sufficient number of musquets for that purpose could not be procured in the United States. By the laws of Vermont, every male, from the age of sixteen to forty-five, is obliged to bear arms at their own expence, and each regiment is entitled

entitled by the same law to one company of artillery and a field-piece; such as do not conform to this ordinance, is obliged at each review to pay a fine. This law was suspended in February last for a time to be limited, at the request of the Governor, in consequence of a letter which he received from General Allen, stating that he (General Allen) had purchased the said Arms of the French Directory, and inclosed an advertisement to that effect.

In February, 1796, General Allen, on enquiry into the price of arms in England, conceived that he might make a better contract in France. He then went to Paris, where he found a large quantity of musquets on sale at a lower price than those in England, because they were of foreign make, too heavy for the use of the French; and besides, the calibre did not answer the French cartridge; they had been taken from the English, Germans, and Dutch. Under the authority of the 18th article of the Treaty between Great Britain and the United States of America in 1794, General Allen purchased twenty thousand of these musquets, furnished with bayonets, and twenty-four brass field-pieces of four-pounders, for the express use of the Militia of Vermont, and agreed to pay 1l. 0s. 10d. for each gun and bayonet, and actually paid 160,240 livres, receiving a credit of 5 per cent. interest, payable in seven years for the remainder.

The Olive Branch is the property of the citizens of the United States. This neutral vessel was chartered in London by General Allen's order, a citizen also of the United States; she was freighted at Ostend with 15,000 musquets, and 21 brass field-pieces, duly cleared out, and sailed for New York, and was met in November last by a British ship of war, nearly 100 leagues west of the Isles of Scilly, and brought as a prize into Portsmouth, under suspicion of being laden with French property, and bound for some French port.

General Allen's contract with the French Directory, managed by Carnot, Clarke, and Petit, the clearance act, and all the papers of the Olive Branch, and destination for New York, were perfectly well known by the master and crew, as may fully appear by their depositions in Court; but the suggestion of a plot and mystery was industriously propagated by a certain American Colonel, (now married and settled in this country) whose name would only fully your paper. I shall only observe *en passant*, that he who wishes to weaken the ties of amity betwixt this country and America, cannot be a friend to either; and let me add, that no such plot has been proved by the captors. In fine it appears from the most respectable evidence in Doctor's Commons, that General Allen purchased the arms in France, as being the cheapest market, according to the request of Governor Chittenden, under the seal
of

of the State, for the use of the Militia of Vermont, in pursuance of the law of that State, and under the faith of an existing Treaty between Great Britain and the United States of America. At the light of such truths the mystery vanishes; but to lay the ghost of the perturbed spirit that invented it, it may be necessary to introduce a subsidiary fact.

Mr. King, the American Ambassador at the British Court, lately purchased 6000 muskets with bayonets in this Kingdom, by order of the Governor of New York, for the use of the Government of that State. These two contracts are equally legal under the letter of an existing Treaty. The Governor, Senators, and Representatives of the State of Vermont have submitted the matter to the Executive Government of the United States, and they have instructed Mr. King, their Minister Plenipotentiary, to reclaim the whole of the property; declaring at the same time, that the utmost friendship subsists between the inhabitants of the United States and the British subjects of Lower Canada. Nay, what is more, Mr. Liston, the British Ambassador at Philadelphia, has seconded the wishes of the United States.

Independent of all these facts, can it be supposed for a moment, that General Allen could be prevailed on by Carnot, Clarke, and Petit, to carry arms to Ireland. General Allen, a man of the first landed property in the United States of America, a man
whose

whose life has been devoted to the cultivation of the arts of peace. No, no, the recreant Colonel should have looked out for some desperate adventurer, who had neither character nor property at stake, as the hero of his plots and mysteries; besides, one hundred leagues to the West of Scilly was not the direct course to Ireland; but the pitiful scribbler does not confine himself to Ireland: he shifts the scene to America, for he says "That Allen's plot is thought to be connected with that of Captain M'Lean, a French Spy in Canada, and that of Senator Blount, impeached by Congress, for selling himself to promote a War amongst the Cherokees, Tenesees, and other Indians, against the Spaniards in East and West Florida." If suggestions of such a random nature, as weak as they are wicked, can link General Allen with two men, upwards of a thousand miles distant from each other in America, and diametrically opposite in their politics, views, and plots, as well may it be supposed that General Allen and Mr. King joined with the French and English Ministry in a plot to divide the States of America betwixt the Monarchy of Great Britain and the Republic of France, in consequence of their respective purchases of arms in France and England, for the use of the Militia of Vermont and New York.

It is also known that our American Colonel was not content with attempting to defame the character of General Allen, but he also attacked Colonel Lyon,

a Mem-

a Member of Congress, for supporting the exportation of cannon-ball, iron, cannon, &c. because the founderies in the States were able to supply the country and Europe; "and this, by the bye," involves Colonel Lyon in the conspiracy with Adet, M^cLean, Blount, and why not with Mr. King, Mr. Pitt, Carnot, &c.

To conclude in the Colonel's favourite phrase, "It is further thought," that the Colonel's plot was connected with ten per cent. profit; and it is thought, and generally known, that General Allen never heard of Captain M^cLean till he was hanged, and very little of Blount, till he was impeached.

A FRIEND TO TRUTH.

Doctor's Commons, Sept. 29.

SECOND DEFAMATORY ARTICLE.

Extract from the Columbian Centinel, printed in Boston, Massachusetts, dated August 9th, 1797, No. 1397.

"IN scanning the measures of a nation (France) so celebrated in diplomatic intrigue, we must not expect the *precise* documents, the secret instructions, which governed the conduct of their agents in a plot, against an innocent, and affectionate, and unoffending ally. But to men versed in the human heart, and acquainted

acquainted with the nature and force of human testimony, more weight will be given to separate independent facts, existing in different places, apparently proceeding from independent causes, but really tending to the same *grand point*, than to any positive testimony from characters the most respectable. Let us then recur to the plain, and irresistible evidence of *facts*. *Ira Allen*, of *Vermont*, a Jacobin, (or which is synonymous) a friend to *France*, not being a *commercial man*, but a plain farmer of the *Green Mountains* in the neighbourhood of *Canada*, embarked last year for *France*. There the officers of the French government procure for him 20,000 stand of small arms. They are invoiced, it is said, at one quarter of the value. Bound to *New Orleans* or some southern port, this enterprising *farmer* is captured, and carried into England.—From thence he writes to his friends, in *Vermont*, to procure evidence, that they were intended for and ordered to that State. The *Vermontese*, alas! good honest Federalists, unconscious of the plot, let out the *fact*. They wanted no arms, they were well supplied, and they scorned to co-operate in a base evasion. The question naturally occurs, for whom were these arms really destined? Not for the *Americans* it is ascertained, for the *British*? No, Colonel *Allen's* prejudices are too deeply rooted, and too generally known to subject them to that imputation. Judge you, my fellow citizens, whether they were not intended for the reduction of *Canada*, and in favour of the nation who supplied them."

PLAIN

PLAIN STATE of the Case of the American Ship *Olive Branch*, captured in November 1796, by his Majesty's Ship the *Audacious*, Captain Gould, and now pending in the Court of Admiralty of Great Britain.

THE three points to which the attention of the reader is solicited, are,—first, that the cargo of the said ship was the true, lawful, and sole property of a Citizen of the United States of America,—secondly, that the said Vessel was the property of Citizens of the United States, and consequently a neutral bottom, bound for a neutral port, and commanded by William Bryant, a Citizen also of the said United States, and the mariners also American Citizens,—thirdly, that the contract for the said arms was executed conformably to the letter and spirit of an existing Treaty betwixt Great Britain and the United States of America, and at the written desire and request of the Governor of Vermont, under the seal of the said State.

In May, 1794, in consequence of Lord Dorchester's Speech to the Indians in British America, and the Order of the British Council of the 6th of November, 1793, to capture American Vessels—His Excellency Thomas Chittenden, Esq; Governor of the State of Vermont, apprehensive of a rupture betwixt Great Britain and the United States of America, convened several of the officers of the Militia
of

of the State of Vermont, for the purpose of enquiring into the state of the arms of the said Militia, which on examination were found to be very deficient. The Governor immediately addressed a letter to Mr. Randolph, then Secretary of the United States, desiring to be informed whether arms could be procured from the said States. Soon after, General Wolfey, Commandant of the Militia of the Northern part of the State of New York, on the Western side of Lake Champlain, came to consult Governor Chittenden on the deficiency of arms in his departments, in what manner the same might be supplied, and the measures that should be adopted in case of a rupture, for the defence of the northern frontiers of New York and Vermont. The result of which was, that Governor Chittenden wrote a second letter to the Secretary of State on the same subject, and at the same time advised General Wolfey to write to his Excellency George Clinton, Esq; Governor of the State of New York, on the subject of a supply of arms, and the defence of the said frontiers, as no arms could be procured from the continental stores, or information where they could be had. In the summer of 1794, Governor Chittenden sent his aid-du-camp to Boston, to endeavour to purchase arms, but without effect. (See the affidavit of John A. Graham.)

The legislature of Vermont, at several sessions, appointed committees to consult and report ways and
and

and means of supplying the militia of the said State with arms and other implements of war, but without effect. In October, 1795, as General Allen proposed to visit Europe, Governor Chittenden, in a written instrument under his hand and the seal of the said State, countersigned by the Secretary of the said State, requested the General to purchase arms and other implements of war for the use of the Militia of Vermont, which instrument was left with the officers of the French government, in consequence of the extension credit.—(See Contract.) Governor Chittenden furnished General Allen with the following passport on that occasion :

(*Seal of the
State
of
Vermont.*)

*To all People to whom these Presents
shall come, Greeting :*

KNOW ye, that the bearer hereof, the Honourable Ira Allen, Esquire, of Colchester, in the State of Vermont, in North America, having a disposition to go to Europe, I can say, he is esteemed a gentleman of honour, a man of business and distinction, and has, in this state, a large landed property; was late a Member of the Council of State, and Treasurer, Trustee of Loans, Surveyor General, Member, and Secretary of the Board of War, Agent to the Congress, to the General Courts of New Hampshire, New York, New Jersey, Pennsylvania, Delaware, and Maryland, and Missioner to the Commander in Chief of Lower Canada, to settle a cartel for the exchange of prisoners, to settle
a truce,

a truce, &c. &c. &c. and now first Major General of the Militia of this State, and one of the Corporation of the University of Vermont; all which offices and missions he has discharged with honor and fidelity, which has contributed much towards the establishment and interest of this government.

Given under my hand and seal of this State, at the Council Chamber, at Windsor, this 27th Day of October, 1795.

THO^s. CHITTENDEN,

By his Excellency's command,

TRUMAN SQUIER, *Secretary.*

In order to maintain a chain of facts, the following affidavits will shew the publicity of General Allen's conduct with regard to the unvaried object of his voyage to Europe.—An object from which he has not deviated in any one instance, and which has been confirmed by *viva voce* and written evidence in America, England, and France.

I, THOMAS CHITTENDEN, Esquire, Governor, Captain General and Commander in Chief in and over the State of Vermont, in the United States, at Williston, in said State, do testify and declare, That in November, anno domini one thousand seven hundred and ninety-five, I requested General Ira Allen

to purchase arms and other implements of war in Europe, for the use of the Militia of this State; and I well knew it to be the intention of the said Allen to purchase said arms and other implements of war for the Militia aforesaid, previous to his departure from America. And further the deponent saith not. Dated at Williston, this 4th day of May, 1797.

THO. CHITTENDEN.

UNITED STATES,

District of Vermont, ss.

I, SAMUEL HITCHCOCK, Esq; Judge of Vermont district, in the United States, do certify, that on the day above-written, personally appeared Thomas Chittenden, Esq; Governor, &c. signer of the foregoing deposition, and made solemn oath, that said deposition by him subscribed contains the truth, the whole truth, and nothing but the truth.

SAM. HITCHCOCK.

This deposition was taken at the request of General Ira Allen, to be made use of in a cause depending at Doctor's Commons, in London, Captain D. Gould, the officers and crew of his Britannic Majesty's ship Audacious man of war, plaintiffs, and General Ira Allen, owner of the cargo of the Olive Branch, of Boston, is defendant. Taken and sealed up by me,

SAM. HITCHCOCK,

Judge of Vermont District.

I, JONATHAN SPAFFORD, Brigadier General of the Militia of the State of Vermont, in the United States, at Williston, in said State, do testify and declare, That in November, anno domini one thousand seven hundred and ninety-five, General Ira Allen was requested by his Excellency Thomas Chittenden, Esquire, Governor of the State of Vermont, in the United States, to purchase arms and other implements of war in Europe, for the use of the Militia of this State, and I well knew it to be the intention of the said Allen to purchase said arms and other implements of war for the Militia afore-said, previous to his departure from America; and further the deponent saith not. Dated at Williston, this 4th day of May, 1797.

JONATHAN SPAFFORD.

UNITED STATES,

Vermont District, ss.

I, SAMUEL HITCHCOCK, Esquire, Judge of Vermont District, in the United States, do certify, that Jonathan Spafford, Esquire, a Brigadier General of the Militia of Vermont, and signer of the foregoing deposition, on the day and year above-written, personally appeared before me, and made solemn oath, that the foregoing deposition contains the truth, the whole truth, and nothing but the truth.

SAM. HITCHCOCK.

This

This deposition was taken at the request of General Ira Allen, to be made use of in a cause depending at Doctor's Commons, in London, Captain D. Gould, the officers and crew of his Britannic Majesty's ship Audacious man of war, plaintiffs, and General Ira Allen, owner of the cargo of the Olive Branch, of Boston, is defendant. Taken and sealed up by me,

SAM. HITCHCOCK,

Judge of Vermont District.

JOHN. A. GRAHAM, L.L.D. of London, testifieth and says, He sailed from Boston, in the ship Minerva, in company with Major General Ira Allen, in December, 1795, and arrived in London in January following; that he often heard General Allen observe, both in America and during the passage, he should endeavour to purchase arms in Europe for the Militia of Vermont.

This deponent further says, He was knowing to Governor Chittenden giving General Allen a letter of credence to the Republic of France, the contents of which this deponent does not pretend to describe.

This deponent further says, He was requested by the Governor of said State in 1794, to purchase

arms in Boston, but this deponent could not procure them; and farther says not.

JOHN A. GRAHAM.

December 16, 1796.

Sworn before me, this 17th Dec. 1796.

JOHN COLLICK.

French Prize Court.

OLIVE BRANCH, WM. BRYANT, Master.

9th March, 1797.

NATHAN BURR GRAHAM, Esquire, late of Pittsford, in the County of Rutland, and State of Vermont, now in London, maketh oath and faith, That on or about the first of December, 1795, this deponent was Major Brigade to the second Brigade, second Division of the Militia of the State of Vermont, commanded by General Eli Cogswell; that he was at Boston, in the State of Massachusetts, in company with Major General Ira Allen, and Brigadier General Jonathan Spafford, and the said General Cogswell, all of the State of Vermont; this deponent heard Major General Allen, General Spafford, and others, conversing with the said Allen respecting his, the said Allen's, going a tour of Europe,

Europe, and General Allen then said to General Spafford that he, the said Allen, should use his endeavours during his absence from America to procure arms for the Militia for the said State of Vermont, in case they could be procured in Europe. This deponent further says, That he heard Major General Allen say in America, that he would never review the Militia of said State until they were sufficiently armed. This deponent further says, The Militia of Vermont are very deficient in arms, and during his being Major Brigade, the officers of the Brigade were very anxious to supply the Militia, but hitherto have not been able to procure them; and further says not.

NATHAN B. GRAHAM.

Same day the said Nathan Burr }
Graham, Esq; was duly sworn to }
the truth of this affidavit.

Before me,

J. H. ARNOLD, Surrogate.

Present, ROBT. SLADE, Not. Pub.

Independent of the purchase of arms, General Allen entertained other laudable views in his visit to this country, in order to extend the ties of amity and friendship betwixt Great Britain and America, and to promote the mutual interest of both. In the

month of January, 1796, he had the honour of a personal interview with his Grace the Duke of Portland, on a proposition of high importance, namely, the cutting of a canal from Lake Champlain to the river St. Laurence, in Lower Canada, for ships of 200 tons, and being informed that his Majesty's ministers declined to make any pecuniary advances at the time, in consequence of the war, he offered to cut the said canal at his own expence, under certain conditions; in consequence of which he was assured that his proposal would be taken into consideration in the approaching recess of parliament. The General also intended to enter into certain commercial connexions with mercantile houses and manufactures in this country, as may be seen by the depositions of Mr. Isaac Scott, of West Smithfield, and William Golbourn, of Wardour-street, Soho, London.—See their affidavits, as also Gen. Allen's letter to Mr. King, of the 31st of January, 1797.

General Allen conceived that under the seventeenth article of the treaty ratified and concluded betwixt Great Britain and the United States of America in 1794*, that he was warranted to purchase

* The following is the XVIIth article of the treaty alluded to:
 " It is agreed, That in all cases where vessels shall be captured and detained on just suspicion of having on board *enemy's property*, or of carrying to the enemy any of the articles which are contraband of

chase arms. The publicity of the General's views is farther strengthened by the two following affidavits: The first made by an American loyalist, and the second by an officer in the British service.

French Prize Court.

The OLIVE BRANCH, Wm. BRYANT, Master.

17th March, 1797.

THE REV. SAMUEL PETERS, L.L.D. of Pimlico, in the parish of St. George, Hanover-square, in the county of Middlesex, upon the Holy Evangelists of Almighty God, saith, That in January, 1796, General Ira Allen, of the State of Vermont, the claimant in this cause, being in company with this deponent at his lodgings at Pimlico aforesaid, he, in conversation, told the deponent, that he had directions from Thomas Chittenden, Governor of the said State of Vermont, to purchase muskets and other implements of war for the Militia of that State,

of war, the said vessel shall be brought to the nearest and most convenient port, and if any property of an enemy should be found on board such vessel, that *part only which belongs to the enemy shall be made prize*, and the vessel shall be at liberty to proceed with the remainder without any impediment. And it is agreed, That all proper measures shall be taken to prevent delay, in deciding the cases of ships or cargoes, so brought in for adjudication, and in the payment or recovery of any indemnification, adjudged or agreed to be paid to the master or owner of such ships."

and desired to be informed by this deponent whether he could buy said arms in England cheaper than in France, to which the deponent replied, that he could not inform him; but he advised him, as he was soon going to France, to make enquiry of some merchants in London respecting the price of arms before he went to France; and this deponent believes said Allen did so act, for after his return from France to London in the month of August, he told this deponent that he could buy arms in France much cheaper than he could in London; and this deponent further saith, that some time in or about the month of January or February, 1796, he, the said Ira Allen enquired of this deponent if he could send arms from England to America, to which this deponent answered in the affirmative, but observed to him that he must obtain a special permission from the Minister; and this deponent, at the same time, desired said General Allen to shew him Governor Chittenden's written directions for buying arms for the Militia of the State of Vermont, whereupon the said General Allen gave a paper in writing to this deponent, the purport of which was, viz. That the bearer hereof is General Ira Allen, a gentleman of large landed property and respectability in the State of Vermont, and designs soon to visit Europe and the Republic of France; he is requested to buy arms and other implements of war for the Militia of the State of Vermont, and it was dated in 1795, signed Thomas Chittenden, and countersigned Trueman Squier, Secretary, and sealed with

with the seal of the State of Vermont; and further faith, that Colonel John A. Graham was present at the conversation last-mentioned, and also read the said written paper signed as abovesaid; and this deponent believes that Major Eyre and Mr. Bell were also present at the same time; and this deponent lastly faith, that he believes the signature to the said paper writing was that of Governor Chittenden, and the seal thereto that of the State of Vermont, by reason that the same corresponds with the signature and seal of a paper now in this deponent's possession, which was sent to him by the Episcopal Convention of Vermont to his Grace the Archbishop of Canterbury, and to this deponent, on occasion of his, the deponent's, appointment to the bishoprick of Vermont, and they appeared like those on the paper General Allen shewed this deponent.

SAMUEL PETERS.

Same day sworn before me,

J. SEWEL, Surrogate.

Present, ROBT. SLADE, Not. Pub.

French Prize Court.

OLIVE BRANCH, WM. BRYANT, Master.

11th April, 1797.

ROBERT EYRE, of Duke-street, Westminster, Esq;
Town-major of His Majesty's Garrison of Upper
Canada, maketh oath and faith, that he knows
Major

Major General Ira Allen, the claimant in this cause, and so came to know him, shortly after his arrival in London from North America, by meeting with him occasionally at the lodgings of the Rev. Samuel Peters, Doctor in Divinity; and the deponent well recollects having dined with the said General Allen, at the said place, some time in or about the month of January or February, 1796, in company with John Andrew Graham, Esq; Mr. Bell, and, as he believes, Governor Desbarres, on which occasion he also recollects, after the removal of the cloth, a good deal of conversation took place, respecting the object of the journey to Europe of the said General Allen, who in the course of it produced several papers, and among them a certificate from the Governor of the State of Vermont, identifying his character of Major General in the American army, his having filled various offices of respectability in his native country, his being a man of large landed property in the State aforesaid, and that he was come to Europe on public, as well as private business; and he further saith, that he well remembers having inspected the certificate aforesaid, which appeared to be a public instrument, countersigned Truman Squier, Secretary, and to be authenticated with the seal of the State; and it was moreover mentioned in the said certificate, or in the course of the conversation which took place on the subject, that the said General Allen was to purchase fire-arms to be carried to America, for the use of the American Army or Militia; and the deponent also further recollects, that

a nego-

a negotiation of the said General Allen with his Majesty's Minister, respecting the cutting a canal from the river St. Laurence to Lake Champlain, was likewise spoke of, as being a part of the object of the journey to Europe, of him the said General Allen.

ROBERT EYRE.

Same day sworn before me,

J. FISHER, Surrogate.

Present,

ROBERT SLADE, Notary Public.

General Allen, after enquiring into the price of arms in England, went to France to see how he could purchase them there, and finding that he could make a more advantageous bargain in that country than in England, he entered into the following contract.

C O N T R A C T.

By the present act passed between the Minister at War, duly authorised to it by an arret of the Executive Directory of the date hereof, and Major General Ira Allen, (for himself) at the request of Thomas Chittenden, Esq; Governor of the State of Vermont, in the United States of America, to purchase arms for the use of the Militia of said State of Vermont, It is stipulated that the French Republic sells to said Ira Allen, the quantity of twenty thousand muskets, foreign make, furnished with their bayonets, which
will

will be delivered along with their boxes at the sea port of Ostend, before the 1st of Fructidor, of the present year, answering to the 18th of August, one thousand seven hundred and ninety-six, (old stile) at the price and rate of twenty-five livres in cash, French money, in gold or silver, per musket, with the condition that if it was not possible to deliver bayonets in equal number with the muskets, the sum of five livres, also in cash, shall be deducted for every bayonet.

And in case those arms should not be in a proper state for use, or should want repair, a proces-verbal, or report of these repairs shall be made, in presence of both parties, between an agent of the French Republic, appointed by the Minister at War to deliver said arms at Ostend, and the person furnished with power by Major General Allen, in order that the amount of said estimate should be deducted from the general price of the whole of the arms as above-mentioned.

And for the execution of the causes and condition of the present contract, General Allen has paid to the French Republic the sum of one hundred thousand livres in cash, and for security of the remainder of the payment, he binds himself, his present and future estate and goods, his heirs, executors, and administrators, promising to pay said remainder of the payment, according to the stipulation of the pre-

present contract, in seven years from the date of the same, with interest of five per cent. yearly, to be computed from the time of the delivery of the muskets and bayonets, promising also that the payment shall be made at Paris, at the time abovementioned.

For the security of the respective clauses and conditions of the present contract, duplicates have been made in French and English, and signed by both contracting parties.

Done at Paris, in the twenty-third Messidor, in the fourth year of the French Republic, answering to the eleventh of July, one thousand seven hundred and ninety six, (old stile.)

(Signed) The Minister at War,
PETIET. (His Seal.)

Major General IRA ALLEN. (His Seal.)

A similar contract was executed for twenty-four four-pounders, &c.

As soon as General Allen executed the aforesaid contract, he communicated the same to Governor Chittenden, with the following advertisement.

To

To the Militia Officers of the State of Vermont.

GENTLEMEN,

Having been requested, by his Excellency Thomas Chittenden, Esq; to purchase arms for the use of the Militia, have the satisfaction to inform you that I have succeeded in making a contract, that arms will be immediately forwarded to New York. I give you the earliest information, that you may be particular in the returns of deficiencies in your muster-rolls, in October next, and that I may better know where to send them after they arrive at Troy; all the printers in the State are requested to publish this.

IRA ALLEN.

Paris, July 15th, 1796.

This advertisement was accordingly published, as may appear by the following affidavit.

French Prize Court.

The OLIVE BRANCH, WM. BRYANT, Master.

6th April, 1797.

NATHAN. SMITH, of the Town of Cornish, in the State of New Hampshire, Bachelor of Physic, but at present residing in Wapping, maketh oath and faith, that some time in or about the latter end of November last, being at Brattleborough, in the State
of

of Vermont, in his way to Boston, with a view to proceed to Edinburgh in North Britain, on his medical pursuits, he read in one of the public newspapers, a paragraph of an Extract of a Letter written from General Ira Allen to Thomas Chittenden, Esq; Governor of the State of Vermont, in which it was set forth, that the said General Allen, who was then in France, had purchased a large quantity of arms for the use of the Militia of the aforesaid State of Vermont; and the deponent well recollects that said extract or advertisement was dated from Paris, and that it contained some particulars which he cannot from memory now take upon himself to set forth; and he further saith, that having, since his arrival in London on Sunday last, been introduced to Major General Ira Allen, the claimant in this cause, whom he was acquainted with in America, he verily believes the advertisement which he saw and read in the Vermont newspapers as aforesaid, referred to the arms shipped on board the ship Olive Branch, and by him the said Major General Allen, now claimed as being the owner thereof.

NATHAN. SMITH.

Same day sworn before me,

J. FISHER, Surrogate.

Present, ROBERT SLADE, N. P.

The

The following Affidavits will shed additional Light on the Subject.

French Prize Court.

OLIVE BRANCH, Wm. BRYANT, Master.

16th May, 1797.

STEPHEN THORN, Esq; late a Justice of the Sessions in and for the county of Washington, in the State of New York, maketh oath and faith, that some time in the month of June last past, he, this deponent, being then at Paris in France, met with General Ira Allen, the claimant in this cause, who informed him that he was then lately arrived there, and not speaking French, he requested this deponent to walk with him to seek lodgings, which he accordingly did; he further faith, that while walking in the streets together on this occasion, the said General Allen informed him of this business, which was respecting the purchasing a quantity of arms to supply the Militia of the State of Vermont, at the instigation of the Governor thereof; and the said General Allen then observed to the deponent, himself, that he never would review his division of said Militia, unless they were provided with arms; and he further faith, that he, this deponent, on or about the time of the general review of the said Militia for the County of Rutland, in the State of Vermont, in the year 1794, was present, and heard him express himself to the same effect; and he further faith, that a day or two after

after the arrival of the said General Allen at Paris as aforesaid, he shewed this deponent a paper, signed by the Governor of the State of Vermont, counter-signed by Trueman Squier, Secretary, and sealed with the seal of the State, in the year 1795; and this deponent being in possession of a paper which had an impresson of the said seal, and the signature of the Governor and Secretary, he is confident the paper so produced by the said General Allen, had the seal of the said State, and the signatures of the persons aforesaid; and he further saith, that the purport of the said paper was to authorize and request the said General Allen to purchase arms, &c. for the use of the Militia of Vermont; and he further saith, that some time in or about the month of July last past, he, the said General Allen, being still in Paris, informed this deponent that he had made and concluded a contract with the Minister at War for 20,000 stand of arms, &c. and 24 brass four-pounders, &c. to be delivered at the port of Ostend, and that he had spoke to Mr. Jesse Putman, an American Merchant of Boston, but who was then in France, to forward the same for him to New York, and about the same time, he, the said General Allen, on being informed that he, the deponent, was on the point of departing for England, gave this deponent a letter for a printer in Vermont, together with an advertisement for him to insert in his newspaper, which he requested to be forwarded by the first opportunity, and which was put on board a vessel bound to Boston, in Au-

gust last, from the port of London, the purport of which advertisement, was, that he had purchased a quantity of arms, &c. for the use of the Militia of Vermont; and he further saith, that a few days after the said letters were put on board the vessel, he saw the said General Allen in London, and was by him informed that the arms, &c. were not shipped, and requested this deponent to charter for him a vessel for the purpose of transporting the said arms, &c. to New York, from the port of Ostend, in consequence of which he, this deponent, on or about the 8th of September last, chartered the ship proceeded against in this cause, at the Virginia and Maryland Coffee-house, Cornhill, London, and going soon afterwards to Holland, and from thence to Ostend, he there found the said vessel, and the aforesaid General Allen, and the deponent remained at Ostend until she was nearly loaded, and then endorsed the charter-party to the said General Allen, and afterwards proceeded from thence to Dunkirk, where he had business to transact; and he further saith, that he was himself Commandant of Cavalry in the Washington Brigades of Militia, and knows the Militia of the North part of the State of New York were very deficient in arms, and as he, the deponent, had his residence within about half a mile from Vermont Line, in the State of New York, and about sixteen southerly of Lake Champlain, he had thereby an opportunity of becoming acquainted with the state of Militia of the said State of Vermont, and
has

has been present at several general reviews of the said Militia, which are very deficient in arms, and all kinds of implements of war; and he lastly saith, that during his stay at Ostend while the vessel was loading, and at Paris while the aforesaid General Allen was concluding the contract, he always heard him say the said arms were for the use of the Militia of Vermont, to be transported by way of New York and Albany, and which he verily believes always was their destination, and that the property of the said arms was always, from the time of the shipment thereof, and now is, solely vested in the said General Allen, and that none of the enemies of Great Britain have any interest therein, as he verily believes.

STEPHEN THORN.

Same day sworn before me,

F. LAWRENCE.

Present; EDWARD TOLLER, N. P.

BE it known to all whom it may concern, that Ira Allen, Esq; Citizen of the State of Vermont, in the United States of America, was in Paris in July, 1796, and informed me, the subscriber, that he was in treaty with the Government of France for a quantity of small arms and field-pieces, for the use of the inhabitants of the State of Vermont. In

a few days after that time, he informed me he had concluded the contract with the Government for the arms and field-pieces, and requested my opinion whether they would be subject to detention or condemnation by the existing treaty between Great Britain and the United States of America, and after the fullest examination of the said treaty, it did not appear that they could be subject to capture or condemnation.

Said Allen then desired me to take charge of shipping the said arms on board some American vessel for New York, to which proposal I agreed, and the said Allen delivered into my hands the contract he had made with the Government for the said arms, and requested me to draw a power of attorney, by which I might be authorised in his behalf to receive the said arms of the Government, and ship them on his account.

But on his telling me that my personal attention would be indispensibly necessary at Ostend to superintend the receipt and shipment of the said arms, I declined the accepting his power of attorney, it being incompatible with my business to leave Paris at that time. In the frequent conversation I had with him respecting the said arms, he uniformly said they were for the use of the inhabitants of the State of Vermont, nor had I the most distant reason from any circumstance to suppose he had any other intention than

than to ship them to New York, for the sole use of the inhabitants of the said State of Vermont.

I, Jesse Putman, of the town of Boston, and State of Massachusetts, do swear, that the facts aforesaid mentioned, or being of my own knowledge, are true, and such as are set down as not being of my own knowledge, I believe firmly to be true, and have signed the present affidavit, at the Chancery Office of the Consulate General of the United States of America, at Paris in France, this twenty-ninth day of January, seventeen hundred and ninety-seven.

JESSE PUTMAN.

Sworn to before me,

J. C. MOUNTFLORENCE.

In testimony that the above signature is that of James Cole Mountflorenc, Chancellor to the Consulate General of the United States of America, at Paris, and Notary Public duly sworn, and that he is properly qualified to administer oaths, I, Fulwar Skipwith, Consul General of the aforesaid States, near the French Republic, have signed these presents, and affixed to it the Consular Seal, at Paris, this twenty-ninth day of January, seventeen hundred and ninety-seven, and in the twenty-first year of American Independence.

(Seal)

FULWAR SKIPWITH.

(Seal.)

CONSULAT

AMERICAIN.

IN the year of our Lord one thousand seven hundred and ninety-seven, and on the 27th day of January, personally appeared at the Chancery Office of the Consulate General of the United States of America at Paris, in France, before me, James Cole Mountflorencce, Chancellor of the same, and Notary Public, duly sworn, Oliver L. Phelps, of the State of Connecticut, in America, being of lawful age, who made oath, That some time in the month of July last past, being in company in this city of Paris with General Ira Allen, of the State of Vermont, one of the aforesaid United States, the said General Allen informed this deponent, to the best of his recollection and belief, that he had purchased of the French government a number of stands of arms and cannon, and that, to the best of his remembrance, he mentioned twenty thousand stands of arms, but that he does not recollect the number of cannon; this deponent further deposes and saith, that he saw a written contract both in the English and French languages respecting the said arms, and that the aforesaid General Allen did also inform this deponent, that these arms were for the use and service of the State of Vermont.

This deponent further deposeth and saith, That the aforesaid General Allen did also shew to this deponent

deponent a letter from the Governor of the afore-
 said State of Vermont, to the said General Allen,
 on the subject of purchasing of arms; that the said
 General Allen told him that these arms were to be
 delivered at Ostend, and that they were to be shipped
 from that port to New York; this deponent further
 deposes and saith, that he met again the aforesaid
 General Allen, in this city of Paris, some time in
 October last, and that he, the said Allen, had char-
 tered the American ship Olive Branch, Captain
 Bryant, to carry the said arms to New York, to
 the best of his, this deponent's, recollection and
 belief; and further this deponent saith not.

OLIVER L. PHELPS.

Sworn to before me,

J. C. MOUNTFLORENCE.

In testimony that James Cole Mountflorencē,
 before whom the foregoing affidavit has been taken,
 is duly and lawfully authorized and empowered to
 administer oaths; that he is Chancellor to the Con-
 sulate General of the United States of America at
 Paris, in France, and Notary Public duly sworn;
 that the above is his signature, to which all saith is
 to be given, in as well in courts as out of courts,
 I, Fulwar Skipwith, Consul General of the afore-
 said United States near the French Republic, have
 signed these presents, and affixed to it the Consular
 Seal at Paris, in France, this twenty-seventh day

D 4

of

of January, one thousand seven hundred and ninety-seven, and in the twenty-first year of American independence.

FULWAR SKIPWITH.

(Seal.)

French Prize Court.

OLIVE BRANCH, WILLIAM BRYANT, Master.

ISAAC SCOTT, of West Smithfield, London, maketh oath and faith, That sometime in or about the month of February, 1796, General Ira Allen, party in this Cause, made application to him, the deponent, for the purchase of sundry merchandize, principally linens and calicoes, to be shipped for America, at which time the said General Ira Allen informed him, that it was his intention to form various connexions with mercantile houses and manufactures in London, and at other places in Great Britain, and added, that when he left America it was his, as well as the general opinion, that there would be a peace in Europe in the ensuing spring; and he further faith, that the said General Allen afterwards, in the course of the following summer, made a journey to Manchester and Liverpool, Leeds, and other places, for the above purpose, as he believes; and the said General Allen further informed the deponent that the intentions above expressed

expressed were undertaken with a view to serve some young friends and relations in America; that in consequence of the aforesaid application, he, the deponent, shipped in the month of March, 1796, fundry goods, consisting of linens, printed calicoes, hosiery, &c. to the amount of between two and three thousand pounds sterling, on board the American ship Polly, Crocker, master, bound for Boston, consigned to Mr. John Allen Finch, of said place; and he further saith, that the aforesaid General Ira Allen, in the course of conversation with this deponent, informed him that it was not his intention to do so much at that time in the mercantile way, as he expected to do hereafter, and that part of his business in this country was with government, to whom he was making application for permission to cut a canal from Lake Champlain to the River St. Laurence, which, he said, would be greatly for the interest of each country, and which, if granted, would enable him to remit to this country, in the article of lumber, to the amount of more than ten thousand pounds per annum, consisting of masts and spars, and deal boards, having upwards of 10,000 acres of land covered with pine timber, with seven saw mills already erected; and the deponent lastly saith, that the aforesaid General Allen informed him that it was his wish to dispose of some of his land, and said that he was informed he would find a more ready sale for them in France or Holland, as there were many people in these countries who were dis-

contented

contented with the existing government, and would be glad to leave them, to which place it was his intention of going, and that in the month of September, 1796, the aforefaid General Ira Allen left London for the Netherlands on his way to New York, for which last-mentioned place the deponent expected to hear from him on mercantile business soon after his arrival.

ISAAC SCOTT.

On the 27th day of June, 1797,
the said Isaac Scott was duly sworn
to the truth of this affidavit,

Before me,

J. NICHOLL, Jun.

Present, ROBT. SLADE, Not. Pub.

Admiralty Prize Court.

OLIVE BRANCH.

WILLIAM GOLBOURN, of Wardour-street, Soho, in the county of Middlesex, feather-manufacturer, maketh oath and faith, That some time in or about the month of August, 1796, he, the deponent, was applied to by General Ira Allen, the claimant in this cause, who informed him that he wanted to be supplied with a quantity of military feathers for the use
of

of the Militia of the State of Vermont, and having given the deponent instructions as to the manner in which he directed those intended for his particular division to be prepared, which he stated to be 5,000 privates, besides officers; the deponent afterwards to wit, in the course of the following month of October, shipped three cases, containing 1646 military feathers, on board the American ship Fame, destined to New York, together with a great variety of patterns for the inspection of the officers of the three other divisions, of which the said Militia, as the said General Allen then informed the deponent, was composed, concerning which he was to wait for an answer from New York, and the further directions of the said General Allen, but as the said General Allen had promised to give the deponent a positive order for said feathers to the amount of near twelve hundred pounds sterling, on receiving the answer from New York, and as it would take a great length of time to collect and prepare them, the deponent immediately applied to Mr. White, in St. James's Market, and Mr. Jolly, in Clare Market, whom he believes to be the only persons in London who carry on the traffic of such kind of feathers to any extent, and desired them to collect all the feathers they could, fit for the purpose aforesaid; and he, the deponent, has since received considerable quantities of feathers from both the persons above-mentioned, and was further proceeding with the utmost dispatch in the execution of the order aforesaid, until he was informed

formed by General Allen that it would be necessary for him to postpone the final completion of the said order, in consequence of the detention of the ship proceeded against in this cause.

WILLIAM GOLBOURN.

On the 27th of June, 1797, the
said William Golbourn was duly
sworn to the truth of this affidavit, }

Before me,

CH. ROBINSON, Surrogate.

Present, ROBT. SLADE, Not. Pub.

WILLIAM BRYANT, *of Norfolk, in the State of Virginia, in North America, aged about twenty-nine Years, being sworn and examined, deposeth as followeth:—*

To the first interrogatory this deponent saith, That he was born at Goldsberry, in the State of Massachusetts, in North America, and has generally resided in that State when at home, until about the month of April last past, since which he has resided, when at home at Norfolk aforesaid; that he esteems himself a citizen of the United States of North America, was heretofore a subject of the King of Great Britain, and has never been a subject of any other Prince or State, and has never been admitted a burgher or freeman of any city or town.

2. To

2. To the second interrogatory this deponent saith, That at the time of the taking and seizing the ship and the lading concerning which he is now examined, he was present on board her, and that she had not any commission.

3. To the third interrogatory this deponent saith, That the ship and her lading concerning which he is now examined, were taken and seized in the latitude 47 7 north, and longitude 10 41 west from the meridian of London, about two o'clock in the afternoon, by his Britannic Majesty's ship of war the Audacious, commanded by Captain Gould; that the reason given for such seizure was, that her lading consisted of arms and military stores, and that she was brought to the port of Portsmouth; that she sailed under American colours, and had not any other colours on board; that no resistance was made at the time when the said ship was taken, and that there was not any other ship of war in sight at the time of the capture.

4. To the fourth interrogatory this deponent saith, That he, this deponent, was master or commander of the ship taken; that he was appointed to the command of the ship by Mr. John Proudfoot, a merchant at Norfolk, in Virginia, is agent to the owners of her, and took possession of her at that place, in the month of June last past; that this
deponent's

deponent's fixed place of abode is at Norfolk aforesaid; is married, and his wife and family reside there.

5. To the fifth interrogatory this deponent saith, That the said ship is of the burthen of about one hundred and sixty-four tons by admeasurement; that the number of mariners (officers and all included) on board the same ship was nine, besides one passenger, who were all Americans, as he understood, except one seaman, who is an Italian, and were shipped and hired by this deponent at different places, namely, the mate and one seaman at Ostend, in the month of November last, two or three of the seamen at London, and the remainder at Dunkirk at different times.

6. To the sixth interrogatory this deponent saith, That neither he, this deponent, or any other of the officers or mariners on board her, had any part, share, or interest in the said ship, as he knows of; that he, this deponent, did belong to the said ship at the time she was seized and taken, in the capacity of master of her; that he has known her about seven months past, first saw her at Norfolk aforesaid, and that she was built near Boston, in North America, about three years ago, as he believes.

7. To the seventh interrogatory this deponent saith, That the name of the said ship is the Olive Branch, of Boston; that she has never been called by any other

other name, as he knows of; that she had a passport or sea brief on board from the United States of America; that the said ship sailed from Norfolk aforesaid on or about the twenty-seventh day of June last past, with a cargo of tar, turpentine, and staves, and carried the same to London, in Great Britain, where the said cargo was delivered; that she there took on board a cargo or lading of sugar, pepper, and other dry goods, which was put on board by Messieurs Du Bois and Son, French merchants, as he believes, who were then in London; that the said ship was cleared out therewith for Bilboa, in Spain, although it was not at the same time intended to proceed thither; that she sailed from London as aforesaid in or about the eleventh day of August last past, and conveyed the last-mentioned cargo to Dunkirk, in France, where the same was delivered to the said Messieurs Du Bois and Son, who went passengers in the said ship; that she was cleared out for Bilboa aforesaid because she could not be cleared out for Dunkirk, to which place she was actually bound; that before this deponent had departed from London aforesaid, he had entered into a contract or charter-party with Stephen Thorn, Esquire, of New York, to proceed from Dunkirk to Ostend, and there to receive such goods on board the said ship as should be brought along-side her, and which the said Stephen Thorn stated would consist of brandy and other goods; that he, this deponent, pursuant thereto, proceeded from Dunkirk to Ostend in ballast;

last; that after his arrival there, he was informed by Ira Allen, Esquire, who is, as he understands, a Major General in the Militia of the State of Vermont, in North America, that the cargo would consist of twenty thousand stands of arms, and twenty-four pieces of cannon, which he had purchased in France for the use of the Militia in the State of Vermont; that he, this deponent, stated to the said Ira Allen that he did not expect such a Cargo, but understood it was to consist of goods of another sort or species, and that he was very sorry he had agreed to take it, as he was apprehensive he should meet with difficulty in conveying it to America, and be detained by British cruizers; that the said Ira Allen assured this deponent that the intended cargo was American property; that after staying about a fortnight at Ostend aforesaid, the cargo now on board the said ship was put on board her by French soldiers and other persons, consisting of about four hundred and one cases, containing muskets and bayonets, as he believes, twenty-one brass cannons, or field-pieces, and three gun carriages; that between thirty and forty of the said cases were opened, and the muskets taken thereout, and stowed in bulk, in some of which were flints, and in the others not; that she sailed from thence about the twelfth day of November last past, and was bound therewith to New York, in North America; that after the said ship sailed from Ostend aforesaid, the mode or manner of her painting was changed or altered, by the

the desire of the said Ira Allen, to elude British cruizers, because she had, as they supposed, been described to them, for the purpose of having her detained; that the said cargo was to have been delivered at New York, and her voyage to have ended, if she had not been seized as aforesaid; and that after the said ship sailed from Ostend aforesaid, she did not sail to, or stop at any other port or place previous to the capture, except, that she dropped anchor in Dunkirk roads for about an hour, waiting for the tide to rise to go over the bar, and having been stopt by the Commodore of a small French fleet, then laying there.

8. To the eighth interrogatory this deponent saith, That the lading the said ship carried at the time of her first setting sail in her last voyage from Ostend aforesaid, was the same which she had on board at the time when she was taken, and consisted of muskets, brass cannons or field-pieces, and gun-carriages, the particular quantities of which he cannot set forth, which was all put on board in several days in the month of November last past.

9. To the ninth interrogatory this deponent saith, That Messieurs Francis Buller, Edward Eades and Son, merchants at Boston, in North America, are the owners of the said ship concerning which he is now examined at the time she was seized; that they

E

are

are Americans, and citizens of the United States of America, as he believes.

10. To the tenth interrogatory this deponent faith, That he cannot depose.

11. To the cleventh interrogatory this deponent faith, That the whole of the said lading was put on board at Ostend aforesaid, as he believes, at the time before-mentioned.

12. To the twelfth interrogatory this deponent faith, That the said Ira Allen was lader, owner, and consignee of the said cargo, as he believes; that he is an American by birth, as he believes, and lives in the State of Vermont, in North America, and is a Major General in the Militia of that State, as he has been informed by him; that the said goods were to be delivered at New York for the real account, risque, and benefit of the said owner, as he believes, and that he can take upon himself to swear, that he believes that at the time of lading the said cargo, and at this present time, and also if the goods shall be restored and unladen at the destined port of New York aforesaid, the goods did, do, and will belong to the said Ira Allen, and to no other person.

13. To the thirteenth interrogatory this deponent faith, That there were three bills of lading signed for

for the goods seized on board the said ship, none of which were false or colourable; and that there were not any bills of lading signed which were different in any respect from those which were on board the said ship at the time she was taken.

14. To the fourteenth interrogatory this deponent saith, That there are not in Great Britain, as he knows of, any bills of lading, invoices, letters, or instruments, relative to the ship and goods concerning which he is now examined, except those which were delivered up to the said Captain Gould at the time she was seized, and those which have been taken possession of by Lieutenant Alexander Keeler, of the said ship Audacious, and prize-master on board the said ship concerning which he is now examined, since her seizure, and those which he now delivers up to the commissioner acting in his examination, and marked from No. 5 to No. 9 inclusive.

15. To the fifteenth interrogatory this deponent saith, That there was a charter-party signed for the voyage in which the said ship concerning which he is now examined, was seized and taken, made between Stephen Thorn, Esquire, of New York, and this deponent, bearing date the eighth day of September last past, and which was assigned by the said Stephen Thorn, Esquire, to the said Ira Allen, by an assignment on the back thereof, bearing date the fifth day of November last past, at Ostend, and

which was taken possession of by the said Captain Gould, and to which he refers for the contents thereof.

16. To the sixteenth interrogatory this deponent saith, That he cannot particularly recollect the several papers, bills of lading, letters, and other writings, which were on board the ship at the time of her departure from Ostend aforesaid, but that none which were then on board were afterwards burnt, torn, thrown overboard, destroyed or cancelled, concealed, or attempted to be concealed, but were all either taken possession of by Captain Gould and the said Lieutenant Keeler, or given up by this deponent to the commissioner acting in this his examination.

17. To the seventeenth interrogatory this deponent saith, That the said ship and her lading concerning which he is now examined, has never been seized as prize, and condemned as such.

18. To the eighteenth interrogatory this deponent saith, That he hath not sustained any loss by the seizing and taking the said ship and cargo concerning which he is now examined, except such as may arise from this detention.

19. To the nineteenth interrogatory this deponent saith, That he cannot depose.

20. To

20. To the twentieth interrogatory this deponent faith, That in case he had arrived at New York aforesaid, the said cargo, on being unladen, would have continued the property of the said Ira Allen, who was to take the chance of the market for the sale of the goods, as he believes.

21. To the twenty-first interrogatory this deponent faith, That he cannot depose.

22. To the twenty-second interrogatory this deponent faith, That the said cargo was partly taken on board the said ship from the quay at Ostend aforesaid, and partly from boats, which brought the same on board her, as she lay in the harbour there, at the time before-mentioned.

23. To the twenty-third interrogatory this deponent faith, That there are not in any country besides Great Britain, or on board any ship or vessel, as he knows of, any bills of lading, invoices, letters, instruments, papers, or documents, relative to the said ship and cargo.

24. To the twenty-fourth interrogatory this deponent faith, That there were not any papers delivered out of the said ship after she sailed out of Ostend aforesaid, and carried away in any manner whatsoever, before she was seized as aforesaid.

25. To the twenty-fifth interrogatory this deponent faith, That bulk was not broken during the voyage in which he was taken, before the seizure of the said ship, nor hath been since.

26. To the twenty-sixth interrogatory this deponent faith, That the said Ira Allen is a passenger on board the said ship; that he came on board the said ship at Ostend, on or about the eleventh day of November last past, and was finally destined to New York aforesaid; that there were not any officers, soldiers, or mariners, secreted on board, nor any of his Britannic Majesty's subjects on board, as he knows of, secreted or confined at the time of the capture.

27. To the twenty-seventh interrogatory this deponent faith, That all the pass-ports, charter-parties, bills of lading, invoices, and papers, which were found on board the said ship, or have been delivered up as aforesaid, are entirely true and fair, and not false or colourable; that he does not know of any matter or circumstance to affect their credit; that the said Ira Allen had a let-pass or letter of safe-conduct, as he believes; but that he cannot further to this interrogatory depose.

28. To the twenty-eighth interrogatory this deponent faith, That he hath not written or signed any letters or papers respecting the said ship and cargo, except the necessary ship's papers.

29. To

29. To the twenty-ninth interrogatory this deponent faith, That the said ship was steering her course, at the time of her being first pursued and taken, towards New York aforesaid; that her course was not altered upon the appearance of the vessel by which she was taken; that her course at all times, when the weather would permit, was directed towards New York aforesaid, and that her course was not altered at any time after she sailed from Ostend aforesaid, to any port or place.

30. To the thirtieth interrogatory this deponent faith, That if the said ship shall be restored, she will belong to the persons before asserted to be the owners of her, and to none others.

31. To the thirty-first interrogatory this deponent faith, That there were not any guns mounted on board the said ship, nor any arms or ammunition belonging to her; that there were not any other guns, or other arms or ammunition mentioned in this interrogatory, or any sort of warlike or naval stores, (except the before-mentioned cargo) and a musket, three pistols, and about half-a-pound of gunpowder, and about three or four pounds of small shot, the property of this deponent, on board her, nor were any such thrown overboard to prevent suspicion, at the time of the capture, or concealed on board under the name of merchandize, or other colourable appellation, in the ship's papers; that the

said cargo was intended for the use of the State of Vermont aforesaid, as he was informed; that he, this deponent, has not heard that there is an ordinance placart, or law, existing in France, forbidding the exportation of arms or ammunition, or warlike or naval stores, by private persons from thence, without licence; and that he cannot further to this interrogatory depose.

32. To the thirty-second interrogatory this deponent saith, That he hath, in his answers to the foregoing interrogatories, set forth the whole which he knows or believes, according to the best of his knowledge or belief, regarding the real and true property and destination of the said ship and cargo concerning which he is now examined, at the time of the seizure.

(Signed) WILLIAM BRYANT.

Sworn before me,

(Signed) H. GIBBS, Commissioner.

In the presence of

(Signed) M. GREETHAM, Jun. N. P.

JOSIAH BUCKLEY, of Norfolk, in the State of Virginia, in North America, aged about thirty-one Years, being sworn and examined, deposeth as followeth:—

1. To the first interrogatory this deponent saith, That he was born at Seven Oaks, in Kent, in the
kingdom

kingdom of Great Britain, but since the year one thousand seven hundred and ninety-three, has resided, when at home, at Norfolk aforesaid; that he is a subject of the King of Great Britain, and has never been a subject of any other Prince or State, except that during his residence in America, he esteemed himself a citizen there; and has never been admitted a burgher or freeman of any city or town.

2. To the second interrogatory this deponent saith, That at the time of the taking and seizing the ship and her lading concerning which he is now examined, he was present on board her, and that she had not any commission.

3. To the third interrogatory this deponent saith, That the said ship and her lading concerning which he is now examined, were taken and seized about sixty or seventy leagues to the westward of Scilly, on or about the nineteenth day of November, by his Britannic Majesty's ship of war the Audacious, commanded by Captain Gould; that she was brought to the port of Portsmouth; that she sailed under American colours, and had not any other colours on board; that no resistance was made at the time when the said ship was taken, and that there was not any other ship of war in sight at the time of the capture.

4. To

4. To the fourth interrogatory this deponent saith, That Mr. William Bryant was master or commander of the ship taken; that he has known him since the month of June last past; that he was appointed to the command of her by Mr. John Proudfood, a merchant at Norfolk, in Virginia, as agent to the owners of her, and took possession of her at that place, in the month of June last past; that the master's fixed place of abode is at Norfolk aforesaid, is married, and his wife and family reside there,

5. To the fifth interrogatory this deponent saith, That the said ship is of the burthen of about one hundred and seventy tons; that the number of mariners (officers and all included) on board the said ship was nine, besides one passenger, who were all Americans, as he understood them to be, except one, who is an Italian, and were shipped and hired by the said master at different places, namely, the mate and one seaman at Ostend, in the month of November last past, two or three of the seamen at London, and the remainder at Dunkirk at different times.

6. To the sixth interrogatory this deponent saith, That neither he, this deponent, or any other of the officers or mariners on board her, had any part, share, or interest in the said ship, as he knows of; that he, this deponent, did belong to the said Ship at the time
the

she was seized and taken, in the capacity of steward of her; that he has known her about six months past, first saw her at Norfolk aforesaid, and that she was built near Boston in North America, as he has heard.

7. To the seventh interrogatory this deponent saith, That the name of the said ship is the Olive Branch; that she has never been called by any other name as he knows of; that the said ship sailed from Norfolk aforesaid, on or about the twenty-seventh day of June last past, with a cargo of tar, turpentine, and staves, and carried the same to London, in Great Britain, where the said cargo was delivered, as he believes; that she took on board a cargo or lading of sugar, pepper, indigo, and other dry goods, and was bound therewith, as he understood, to Bilboa in Spain; that she sailed from London aforesaid, on or about the eleventh day of August last past, and conveyed the last mentioned cargo to Dunkirk in France, (instead of Bilboa aforesaid) where the same was delivered to a French gentleman, as he believes, who went passenger in the said ship to that place, but whose name he does not know; that she was cleared out for Bilboa aforesaid, because she could not be cleared out for Dunkirk, to which place she was actually bound; that she sailed from Dunkirk to Ostend in ballast; that after staying about a fortnight or three weeks at Ostend aforesaid, the cargo now on board the said ship was put on board her

her by French foldiers, and other perfons, confifting of mufkets and bayonets, in cafes, about twenty-three brafs cannons or field-pieces, and fome gun-carriages; that feveral of the faid cafes were opened, and the mufkets taken thereout, and ftowed in bulk, in which were flints; that ſhe failed from thence about the twelfth day of November laſt paſt, and was bound therewith to New York, in North America, as he believes, becauſe he ſigned articles for that place; that it was ſuſpected on board the ſaid ſhip, that after her arrival at that place the ſaid cargo would have been put into other veſſels, and conveyed to ſome of the French windward iſlands, but that he does not know whether ſuch tranſaction was intended to take place or not; that after the ſaid ſhip failed from Oſtend aforeſaid, the mode or manner of her painting was changed or altered by order of the ſaid maſter, by painting a black and white ſtreak on the yellow and green, to elude Britiſh cruizers, as he believes; that after the ſaid ſhip failed from Oſtend aforeſaid, ſhe did not fail to or ſtop at any other port or place, previously to her capture, except that ſhe dropped anchor in Dunkirk Roads for about two hours, waiting for the tide to riſe to go over the bar, and having been ſtopt by the commodore of a ſmall French fleet, then laying there.

8. To the eighth interrogatory this deponent faith,
That the lading the ſaid ſhip carried, at the time of
her

her first setting sail in her last voyage from Ostend
aforesaid, was the same which she had on board at
the time when she was taken, and consisted of mus-
kets, brass cannons or field pieces, and gun-car-
riages, the particular quantities of which he cannot
set forth, which was all put on board in several days,
in the month of November last past.

9. To the ninth interrogatory this deponent saith,
That he cannot depose.

10. To the tenth Interrogatory this deponent saith,
That he cannot depose.

11. To the eleventh interrogatory this deponent
saith, That the whole of the said lading was put on
board at Ostend aforesaid, as he believes.

12. To the twelfth interrogatory this deponent
saith, That he believes Mr. John Williams was the
lader of the said cargo which was sent on board by
French soldiers; that the said Ira Allen was owner
and consignee thereof, as he has heard; that he is an
American by birth, as he believes, and lives in the
State of Vermont, in North America, and is a Major
General in the Militia of that State, as he was in-
formed; that he does not know what countryman the
said John Williams is; that the said goods were to
have been delivered at New York, for the real ac-
count, risk, and benefit of the said owner, as he
be-

he believes; and that he can take upon himself to swear, that he believes that at the time of the lading the said cargo, and at this present time, and also if the said goods shall be restored and unladen at New York aforesaid, the goods did, do, and will belong to the aforesaid Ira Allen, and to no other person.

13. To the thirteenth interrogatory this deponent saith, That he cannot depose.

14. To the fourteenth interrogatory this deponent saith, That he cannot depose.

15. To the fifteenth interrogatory this deponent saith, That he cannot depose.

16. To the sixteenth interrogatory this deponent saith, That there were not any papers or bills of lading burnt, torn, thrown overboard, destroyed or cancelled, concealed, or attempted to be concealed, as he knows of.

17. To the seventeenth interrogatory this deponent saith, That the said ship has never been seized as prize, and condemned as such.

18. To the eighteenth interrogatory this deponent saith, That he hath not sustained any loss by the seizing and taking the said ship, concerning which he is now examined.

19. To

19. To the nineteenth interrogatory this deponent faith, That he cannot depose.

20. To the twentieth interrogatory this deponent faith, That he cannot depose.

21. To the twenty-first interrogatory this deponent faith, That he cannot depose.

22. To the twenty-second interrogatory this deponent faith, That the said cargo was taken partly on board the ship from the Quay at Ostend aforesaid, and partly from boats which brought the same on board her as she lay in the harbour there, at the times before mentioned.

23. To the twenty-third interrogatory this deponent faith, That he cannot depose.

24. To the twenty-fourth interrogatory this deponent faith, That there were not any papers delivered out of the said ship and carried away in any manner whatsoever, after she sailed from Ostend aforesaid, before she was seized as aforesaid.

25. To the twenty-fifth interrogatory this deponent faith, That bulk was not broken during the voyage in which the said ship was taken, before the seizure of said ship, nor since, as he knows of.

26. To

26. To the twenty-sixth interrogatory this deponent faith, That there was a passenger on board the said ship, whose name was Ira Allen, and who is a Major General in the Militia in the State of Vermont, in North America, as he believes, and who is interested in the cargo, as he has heard; that the said Ira Allen came on board the said ship at Ostend, on or about the eleventh day of November last past, and was finally destined to New York aforesaid; that there were not any officers, soldiers, or mariners secreted on board, nor any of his Britannic Majesty's subjects on board, as he knows of, or secreted or confined, at the time of the capture.

27. To the twenty-seventh Interrogatory this deponent faith, That he cannot depose.

28. To the twenty-eighth interrogatory this deponent faith, That he cannot depose.

29. To the twenty-ninth interrogatory this deponent faith, That the said ship was steering her course, at the time of her being first pursued and taken, towards New York aforesaid, and that her course at all times, when the weather would permit, was directed towards New York aforesaid, and was not altered at any time after she sailed from Ostend aforesaid, to any other port or place.

30. To the thirtieth interrogatory this deponent faith, That he cannot depose.

31. To

31. To the thirty-first interrogatory this deponent saith, That there were not any guns mounted on board the said ship, nor any arms or ammunition, (except the before mentioned cargo) and a musket, three pistols, and about half a pound of gun-powder, and about three or four pounds of small shot on board her, the property of the master; nor were any such thrown overboard to prevent suspicion at the time of the capture, nor concealed on board under the name of merchandize, or any other colourable appellation, in the ships papers, as he knows of; that the said cargo was intended for the use of the Militia of the State of Vermont aforesaid, as he was informed; that he, this deponent, has not heard that there is an ordinance placart, or law existing in France, forbidding the exportation of arms, ammunition, or warlike or naval stores, by private persons from thence, without licence; and that he cannot further to this interrogatory depose.

32. To the thirty-second interrogatory this deponent saith, That he hath, in his answers to the foregoing interrogatories, set forth the whole which he knows or believes, according to the best of his knowledge and belief, regarding the real and true property and destination of the said ship and cargo, concerning which he is now examined, at the time of the capture.

JOSIAH BUCKLEY.

Sworn before me, NATHAN. GIBBS.

In the presence of M. GREETHAM, Jun. N. P.

F

JOHN

JOHN ROBERSON, of New York in North America,
aged about thirty-three years, being sworn and ex-
amined, deposeth as follows:

1. To the first interrogatory this deponent saith,
That he was born in the State of Connecticut, in
North America, but for about five years past has
resided, when at home, at New York aforesaid; that
he esteems himself a citizen of the United States of
America, was heretofore a subject of the King of
Great Britain, but has never been a subject to any
other Prince or State, and was never admitted a
burgher or freeman of any city or town.

2. To the second interrogatory this deponent saith,
That at the time of the taking and seizing the ship
and her lading, concerning which he is now examined,
he was present on board her, and that she had not
any commission.

3. To the third interrogatory this deponent saith,
That the said ship and goods, concerning which he
is now examined, were taken and seized in the longi-
tude 8. 3. west latitude 46. 15. north, on or about
the nineteenth day of November, about noon, by
his Britannic Majesty's ship of war Audacious, com-
manded by Captain Gould; that he does not know
the reason of such seizure; that she was brought to
the port of Portsmouth; that she sailed under Ame-
rican

rican colours, and had not any other colours on board; that no resistance was made at the time when the said ship was taken, and that there was not any other ship of war in sight at the time of the capture.

4. To the fourth interrogatory this deponent saith, That Mr. William Bryant was master or commander of the ship; that he has known him since the twenty-eighth of October last past; that he first saw him at Ostend, and does not know who appointed him to the command of the said ship, and that he cannot further to this interrogatory depose.

5. To the fifth interrogatory this deponent saith, That the said ship is of the burthen of about two hundred tons; that the number of mariners, officers, and all included on board the said ship, was nine, as he believes, besides one passenger, who were all Americans, as he understood, except one, who is an Italian; and that he cannot further to this interrogatory depose.

6. To the sixth interrogatory this deponent saith, That neither the said master, or any other of the said officers or mariners on board her, had any part, share, or interest in the said ship, as he knows of; that he, this deponent, did belong to the said ship at the time she was seized and taken, in the capacity of mate of her; that he has known the said ship since the said twenty-eighth day of October last; that he

first saw her at Ostend, and that he does not know where she was built.

7. To the seventh interrogatory this deponent saith, That the name of the said ship is the Olive Branch, of Boston; that he does not know how long she has been so called, nor does he know that she has ever been called by any other name or names; that her last voyage began at Ostend, where she took on board a cargo or lading of muskets, field-pieces, and gun-carriages, as he has understood, but which were taken on board her before he belonged to her, with which she set sail from thence on or about the eleventh day of November last past, and was bound therewith to New York, in North America, as he believes, as he, this deponent, signed articles for that place, where the cargo was to have been delivered, and her voyage to have ended, if she had not been seized as aforesaid, as he believes; and that after the said ship sailed from Ostend aforesaid, she did not sail to or stop at any other port or place, previous to the capture, except that she dropped anchor in Dunkirk Roads for about two hours, waiting for the tide to rise, to go over the bar, and having been stoppt by the commodore of a small French fleet then laying there.

8. To the eighth interrogatory this deponent saith, That the lading the said ship carried at the time of
her

her first setting sail in her last voyage from Ostend
aforesaid, was the same which she had on board at
the time when she was taken, and consisted of mus-
kets, brass field-pieces, and gun-carriages, the quan-
tities of which he does not know, which was all put
on board her before he, this deponent, belonged
to her.

9. To the ninth interrogatory this deponent saith,
That he cannot depose.

10. To the tenth interrogatory this deponent saith,
That he cannot depose.

11. To the eleventh interrogatory this deponent
saith, That the whole of the said lading was put on
board at Ostend aforesaid, as he believes.

12. To the twelfth interrogatory this deponent
saith, That he believes Mr. John Williams, an
American merchant at Ostend, or Mr. Thorne, an
American merchant, who was at Ostend, was the
lader of the said goods, but that he does not know
who are the owners or the consignees thereof, and
that he cannot further to this interrogatory depose.

13. To the thirteenth interrogatory this deponent
saith, That he cannot depose.

14. To the fourteenth interrogatory this deponent faith, That he cannot depose.

15. To the fifteenth interrogatory this deponent faith, That he cannot depose.

16. To the sixteenth interrogatory this deponent faith, That there were not any papers, bills of lading, letters, or other writings, burnt, torn, thrown overboard, destroyed or cancelled, concealed or attempted to be concealed, as he knows of.

17. To the seventeenth interrogatory this deponent faith, That the said ship concerning which he is now examined, has never been seized as prize and condemned as such, as he knows of.

18. To the eighteenth interrogatory this deponent faith, That he hath not sustained any loss by the taking and seizing the ship and her cargo, concerning which he is now examined.

20. To the twentieth interrogatory this deponent faith, That he cannot depose.

21. To the twenty-first interrogatory this deponent faith, That he cannot depose.

22. To the twenty-second interrogatory this deponent faith, That not being on board at the time the
cargo

cargo was put on board the said ship, he cannot further depose.

23. To the twenty-third interrogatory this deponent saith, That he cannot depose.

24. To the twenty-fourth interrogatory this deponent saith, That there were not any papers delivered out of the said ship after she sailed from Ostend aforesaid, and carried away in any manner whatever, before she was seized.

25. To the twenty-fifth interrogatory this deponent saith, That bulk was not broken during the voyage in which the said ship was taken, before the seizure, or since.

26. To the twenty-sixth interrogatory this deponent saith, That there was a passenger on board the said ship, whose name was Ira Allen, and who is a Major General in the Militia of the State of Vermont, in North America, as he believes, and who is interested in the cargo, as he has heard, and that he came on board the said ship at Ostend, on or about the eleventh day of November last past, and was finally destined to New York aforesaid; that there was not any officers, soldiers, or mariners secreted on board, nor any of his Britannic Majesty's subjects on board as he knows of (unless the steward of her is an Englishman) or confined or secreted at the time of the capture.

27. To the twenty-seventh interrogatory this deponent faith, That he cannot depose.

28. To the twenty-eighth interrogatory this deponent faith, That he hath not written or signed any letters or papers concerning the said ship and her cargo concerning which he is now examined.

29. To the twenty-ninth interrogatory this deponent faith, That the said ship was steering her course at the time of her being first pursued and taken, towards New York aforesaid; that her course was not altered upon the appearance of the vessel by which she was taken, except that having kept her way a point or two while they were getting the anchors ast, she being too much by the head; the course was again altered directly to New York, at the time the said ship Audacious came in sight; that her course, at all times, when the weather would permit, was directed to New York aforesaid, and that her course was not altered at any time after she sailed from Ostend aforesaid, to any other port or place.

30. To the thirtieth interrogatory this deponent faith, That he cannot depose.

31. To the thirty-first interrogatory this deponent faith, That there were not any guns mounted on board the said ship, nor any arms or ammunition
belonging

belonging to her, as he knows of; that there were not any other guns, or other arms or ammunition mentioned in this interrogatory, or any sort of warlike or naval stores (except the before-mentioned cargo) on board her, nor were any such thrown overboard to prevent suspicion at the time of the capture, nor concealed on board, under the name of merchandize, or any other colourable appellation, in the ship's papers, as he knows of; that the said cargo was intended for the use of the Militia of the State of Vermont aforesaid, as he has heard; that this deponent has not heard of any ordinance or placart, or law, existing in France, forbidding the exportation of arms or ammunition, or warlike or naval stores, from France, without licence; and that he cannot further to this interrogatory depose.

32. To the thirty-second interrogatory this deponent saith, That he hath, in his answers to the foregoing interrogatories, set forth the whole which he knows or believes, according to the best of his knowledge and belief, regarding the real and true property and destination of the ship and cargo concerning which he is now examined, at the time of the seizure.

JOHN ROBERSON.

Sworn before me,
H. GIBBS.

In the presence of
M. GREETHAM, Jun. Not. Pub.

OLIVE

OLIVE BRANCH, WM. BRYANT, Master.

24th Feb. 1797.

THE claim of Ira Allen, Esq; of Colchester, in the county of Chittenden, and State of Vermont, in North America, a citizen of the United States, on behalf of himself, the true, lawful, and sole owner and proprietor of

15,000 muskets, and
15,000 bayonets } or thereabouts

21 brass four-pound field-pieces, and
3 gun carriages

being the cargo laden on board the said ship Olive Branch, William Bryant, master, at the time of the capture and seizure thereof by his Majesty's ship of war Audacious, David Gould, Esq; commander, and brought to Portsmouth, whilst in the prosecution of a voyage from Ostend to New York, for the said goods as American property, and for all such loss, costs, charges, damages, and expences as have arisen, or which shall or may arise, by reason or means of the seizure and detention thereof as aforesaid.

IRA ALLEN.

J. NICHOL, S. &c. &c.

This agrees with the original claim now remaining in the Registry of the High Court of Admiralty of England, the same having been carefully collated therewith, in Doctor's Commons, London, this 16th day of October, 1797.

By me, ROB. SLADE, Proctor for the Claimant.

On

On board the Audacious Man of War,

Nov. 21st, 1796.

SIR,

As owner of the cargo on board the ship Olive Branch, that every possible satisfaction be given to evince that said ship is bound to New York, as stated in the ship's papers, &c. I make the following proposals, viz. 1st, that said ship be convoyed to New York by an English ship of war,—2d, that an armed force be continued on board said ship to conduct her to New York,—3d, that I will give a bond of one hundred thousand pounds that said ship shall proceed to New York, as quick as wind and weather will permit, and there discharge her cargo.

Should either of these proposals be satisfactory, I will comply with them, but if I am detained, shall feel myself extremely injured, the flag of the United States insulted, and that in the face of existing treaties between Great Britain and the United States, which may tend to injure that harmony so happily subsisting between the two countries.

I have the honour to be,

Your most obedient

Humble servant,

IRA ALLEN.

Capt. Gould.

Decem-

London, December 14th, 1796.

SIR,

On my way from Ostend to New York, about eighty leagues to the westward of Scilly, on board of the American ship Olive Branch, of Boston, fell in with his Britannic Majesty's ship of war the Audacious, commanded by Captain Gould, on the 19th of November last. Mr. Smith, an officer of said man of war, boarded said Olive Branch, and enquired of Captain Bryant, commander of the ship Olive Branch, from whence he came, where he was bound, and what his cargo was? Captain Bryant answered from Ostend to New York, with military stores. Mr. Smith requested Captain Bryant to go on board his boat to the Audacious, which he did. Mr. Smith remained with me on board said Olive Branch. Soon after said boat returned, and I was requested to go on board said man of war, which I complied with, taking with me my contract with the French government for 20,000 muskets, &c. (copy inclosed No. 1,) also my contract with said government for field-pieces, &c. (copy inclosed No. 2,) the originals of which were taken from me by Captain Gould, together with several other papers. In fact the papers respecting the cargo of the Olive Branch are in the possession of the officers of this government.

I got on shore at Portsmouth on Sunday night last, and was detained for examination on Monday,
by

by a Commissioner of the Admiralty; the Olive Branch, with her guard, and Captain Bryant, are in quarantine.

I think I shall soon find proof that it was my intention to purchase arms, and other implements of war, for the use of the Militia of Vermont, long before I ever saw France; such proof will be communicated to you as soon as circumstances will permit.

In this situation I have to request that you take such measures as may appear most consistent to liberate said ship and cargo, that she may proceed on her voyage without delay, and that compensation in damage be also given for detention, &c.

Your attention to this business will much oblige him, who has the honour to be,

Your most obedient,

Humble servant,

IRA ALLEN.

His Excellency Rufus King, Esq;
Minister of the United States.

London, January 31st, 1797.

SIR,

I have carefully inspected the copy of Lord Grenville's note to you, concerning the ship Olive Branch,
of

of Boston, and am of opinion that the King's Advocate is under a mistake, for in his report are these words, viz. " that the prayer of the party is, that he may be permitted to pursue his voyage without further inquiry." I have not suggested the most distant idea against a scrupulous inquiry and investigation of every circumstance concerning said ship and cargo; but to the reverse of that, much time has elapsed that satisfactory inquiry might be made, and it is incumbent on the captors to procure sufficient proof, or their expected prize must be discharged, with damage, &c. for a neutral ship, sailing on the open sea under neutral colours, property and regular papers have an undoubted right to go to a neutral port. The burthen of proof is therefore on the captors, as I have reason to believe that there has not, nor will not any proof appear against said ship or cargo; it must rely on your Excellency to obtain the liberation of said ship and cargo, restoration of papers, with damage, &c. or to concert measures with Lord Grenville, that an early day may be assigned for a speedy determination of this matter, and that I may be informed when and where such determination may be had, much business and family connections requiring my immediate return to America.

When I consider the severe conflict between the belligerent powers, and the cargo I had on board the said ship, being muskets, &c. do not think strange on being detained for examination, seventy-three
days

days having already elapsed, makes a speedy decision reasonable.

That the case may be clearly understood, I proceed to make a statement thereof; in Lord Grenville's said note are these words, viz. "there being no sufficient evidence of the property on board this vessel," I have to remark, that it is a well known maxim amongst mercantile men, that the invoice and delivery of goods are legal proof that the property of such goods are vested in the purchaser? Why then is not my contract under the hand and seal of the French Minister, and the delivery and possession of the goods, legal evidence of that property being vested in me? What other proof can be expected, or reasonably required, to evince my right to the cargo on board said vessel? Or how is it possible for any man to prove a better right to property, than that he has bought it from the rightful owner, paid a large sum of money for it, and is in full and peaceable possession of it?

As to another clause in his Lordship's note, viz. "And there being reasons which render it necessary that more satisfactory proof of other circumstances of the business should be afforded;" to this I answer that I wish to give every satisfaction that the nature of the business will admit, and time for sufficient deliberation, and hope that the following statement of evidence, &c. will be satisfactory on said *doubtful* circum-

circumstances; that said ship's papers, many other papers and letters on board said ship, all evince that said ship was bound to New York, there being no papers found in or about said ship, or in possession of any person on board said ship, on the most scrupulous investigation of opening and searching all trunks, papers, breaking seals, &c. on board said ship, that in the least intimated that said ship was going to any other place than New York, but all such papers tend to prove that said ship was bound to New York, which is a strong circumstantial proof that said ship was bound to New York as aforesaid.

The evidence of Captain Bryant, his mate, and the ship's crew, all declare that said ship was bound to New York, which evidence was taken by the King's Solicitor at Portsmouth, and are a strong support to the ship's papers, as additional proof that said ship was bound to New York.

Captain Bryant's claim and deposition taken at Doctor's Commons, in behalf of the owners of said ship, are an additional proof of said ship being neutral property, and that she was bound to New York.

The depositions exhibited prove that it was my intention, with the advice and request of the Governor of the State of Vermont, before I left America in 1795, to purchase in some part of Europe muskets, &c. to supply the Militia of said State.

As

As Major General of the Militia of the State of Vermont, I have an ambition to supply said Militia with muskets, &c. that they might make a respectable appearance at a general review, and do honour to their country; besides, it is good national policy in time of peace for the States of America to prepare for war, and keep up a good discipline amongst their Militia; by which they may preserve the blessings of peace to their country for many years yet to come.

The United States, apprized of their situation, in the treaty between Great Britain and themselves, reserved the right, when they were at peace, to purchase muskets, &c. and transport them in neutral ships to America; it is, therefore, a hardship to be detained when acting upon the good faith of, and consistent with, existing treaties; and further, on a retrospective view of the treaty of 1794, my contracts with the French government for muskets, &c. and the evidence exhibited in this case, will not further detention be a daily violation of said treaty?

By the laws of the United States and said treaty, any citizen thereof, taking a commission or instructions from any King, Prince, or State, to act in a hostile manner against Great Britain, may be severely punished; I therefore annex certificates, No. 1 and 2, to shew my real estate in Vermont, and the improbability of my acting under the French government,

ment, for they could, no doubt, find a man that would undertake to transport muskets, &c. to the West Indies, &c. on much easier terms than it is reasonable to suppose that a man, in my circumstances, would do. Besides this, I have been at the expence of forming mercantile connexions, and have purchased and sent to America goods to the amount of about £ 6,000 from the house of Messrs. Bowerbank, Munkhouse, and Co. Mr. Scott, and Mr. Golbourn, of London; Messrs. Wigglesworth, Hague, and Co. Messrs. Joseph Randal and Co. of Leeds; and Messrs. Charles Wood and Co. of Manchester; have also conversed with and got the address of several merchants of Liverpool, Sheffield, Nottingham, Dublin, Londonderry, &c. and have left accounts of some of my own and other lands I had the agency of for sale with Messrs. Bowerbank, Munkhouse, and Co. of London; Mr. Saportas, of Amsterdam; Mr. Emanuel Wamberfie, of Ghent; Messrs. Starling, Horner, Delap, and Co. of Londonderry, &c. that such lands might be sold to advantage. To form the aforesaid connexions in business, has cost me much money, and more than one year's absence from my family; this may have some weight to justify my conduct against unreasonable jealousy.

As to the idea that the French Government would not sell muskets, &c. in the time of war, I have to remark, that the muskets and cannon of almost all
nations

nations differ in their calibre, the shot and ammunition prepared for the national arms, will not suit those taken from their enemy, hence foreign cannon and foreign muskets could not, with convenience, be made use of in France, in the prosecution of the war, and are, in effect, but a mere article of merchandize; that I did not buy one French musket; those I have are about half English make, the remainder German and Dutch. It is well known that the French Directory were hard pushed for money last summer, 160,240 livres, paid in specie, might be worth their attention. The difficulties in transporting muskets in time of war, tend to make them unsaleable. From these considerations my contract may be accounted for, on fair principles, beneficial to the feller and buyer.

I shall only add, that if it doth not appear by proof that I am acting under the French Government, I have an undoubted right to proceed to New York with said ship and cargo. I am, with high consideration, your Excellency's most obedient

Humble Servant,

IRA ALLEN.

His Excellency Rufus King, Esq;

(CERTIFICATE No. 1.)

*To all People to whom these Presents
(State Seal) shall come, Greeting:*

KNOW ye, that I, Thomas Chittenden, Esquire,
Governor, Captain General, and Commander in

Chief in and over the State of Vermont, do hereby certify, That Solomon Miller and Orringe Smith, Esquires, are legally elected and sworn Justices of the Peace, within and for the county of Chittenden, and State of Vermont, in North America, due faith and credit will be given to their official proceedings accordingly.

Given under my hand and seal of this State, at Williston, in the County of Chittenden, and State of Vermont, this 7th day of November, 1795.

THOS. CHITTENDEN.

By his Excellency's command,

TRUMAN SQUIER, Secretary.

(CERTIFICATE No. 2.)

EXTRACT of MILLER'S and SMITH'S CERTIFICATE.

*To all People to whom these Presents shall
come, Greeting :*

Know ye, that We, Solomon Miller and Orringe Smith, Justices of the Peace within and for the County of Chittenden, and State of Vermont, in North America, Esquires, have, at the request of Major General Ira Allen, of Colchester, County and State aforesaid, attended at his Land Office, and on due examination find, that he has regular
authenticated

authenticated deeds of the Lands hereafter described in this State, viz. containing more than two hundred thousand acres of land, that on these lands General Allen has seven saw-mills, three corn-mills, three iron-founderies, one anchor-shop, and many other buildings and extensive settlements, tenements, &c. &c. &c.

SOLOMON MILLER.

ORRINGE SMITH.

Colchester, Nov. 6, 1795.

No. 340, Strand, London, April 7, 1797.

SIR,

I am under the necessity of again troubling your Excellency on the subject of my claim for the cargo of the ship Olive Branch, now before the British Court of Admiralty, which I have attended almost daily for upwards of six weeks past, and finding the little prospect there is of the matter being adjudged in its regular course, until long after the approaching recess of the court, which I am informed will take place at Easter, I have turned my attention to the means of obtaining further proofs respecting my interest in the said cargo, which I trust are such as will induce your Excellency to renew your applications to the British ministry for the examination of my claim by the King's Advocate, in hopes that he will either advise a consent

being given to the restitution of my property with damage, or use his influence with the court to have the question immediately adjudged, and which, from the nature of the cargo, every day is getting into a state of detriion from the rust and other accidents; and the narrow compass in which the question lies, I think myself well intitled to expect, and trust your Excellency will support, with all the influence of your public character. The further proofs I allude to are contained in the papers hereto annexed, marked from No. 1 to No. 6, which furnish, in my humble opinion, evidence of a nature perfectly unquestionable, seeing that they refer to transactions that took place prior to the purchase of the goods, and the measures publicly avowed and advertised after such purchase, and anterior to their shipment. I trust that these proofs will strike your Excellency as they do me, and the professional persons to whom they have been submitted, and produce the effect I expected from them; but if the British Government should still entertain any doubt as to the verity of my claim, and judgment be still procrastinated, I must entreat your Excellency, in my behalf, to declare my readiness to sell the cargo to the British Government, rather than suffer it to perish, by waiting till my cause will be heard in its ordinary course, the period of which, I perceive, is very uncertain, and the detention very injurious to me, as all my concerns in America, in which a capital to an enormous amount is embarked in various great public
undertaking

undertakings (one in particular is the erecting public buildings for the University of Vermont, to which I have given a donation of four thousand pounds, and caused the materials to be prepared for building) these are kept in a state of ruinous suspense by my absence. One of the objects of my journey to England was the purpose of forming commercial connexions in London, Leeds, Manchester, and other places, and which connexions have been accordingly formed, will, by a further detention, be, in a great measure, defeated, very injurious to English merchants, as I am deprived of the use of the returns of the goods in question, if landed in America, which I can fairly estimate at more than thirty thousand pounds sterling.

I must repeat that the affidavits and my claim, the examinations of myself and others on board the ship, the papers of the ship, and those annexed to this letter, furnish every proof which the nature of the case can admit of, and the most rigid justice require.

Relying on the good offices of your Excellency with the British ministry to effect a determination as early as possible, I have the honour to remain,

Your most obedient humble Servant,

IRA ALLEN.

His Excellency Rufus King, Esq;

*Legation of the United States of America to
Great Britain.*

I, RUFUS KING, Minister Plenipotentiary of the States of America to the Court of Great Britain, (at the request of General Allen, a citizen of the said United States) do hereby certify, That the laws of the said United States do not prohibit, and therefore that it is free for any American citizen to purchase cannon, muskets, and other military stores, and that I know no limitation or restraint whatever in this respect. In faith whereof I have hereunto signed my name, and placed the seal of the Legation, this 27th day of June, 1797.

RUFUS KING. (Seal.)

*Passed
May 8th,
1792.* } *An Act more effectually to provide for the
National Defence, by establishing an uni-
form Militia throughout the United States.*

SECT. I. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That each and every free able-bodied white male citizen of the respective States, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is hereafter excepted) shall severally and respectively be inrolled in the Militia by the Captain or Commanding Officer of the Company within whose bounds such citizen shall reside,
and

and that within twelve months after the passing of this Act; and it shall at all times hereafter be the duty of every such Captain or Commanding Officer of a Company to enrol every such citizen as afore-said, and also those who shall, from time to time, arrive at the age of eighteen years, or being of the age of eighteen years, under the age of forty-five years (except as before excepted) shall come to reside within his bounds, and shall, without delay, notify such citizen of the said enrolment, by a proper Non-commissioned Officer of the Company, by whom such notice may be proved; that every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints and a knapsack, a pouch, with a box therein, to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch, and powder-horn, twenty balls, suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear, so armed, accoutred, and provided, when called out to exercise, or into service, except that when called out on company days to exercise only, he may appear without a knapsack; that the commissioned officers shall severally be armed with a sword or hanger, and spontoon; and that from and after five years from the passing of this Act, all muskets for arming the Militia, as herein required, shall be of bores sufficient for balls of the eighteenth

part

part of a pound; and every citizen so inrolled, and providing himself with the arms, ammunition, and accoutrements required as aforesaid, shall hold the same, exempted from all suits, distresses, executions, or sales, for debt, or for the payment of taxes.

SECT. IV. And be it further enacted, That out of the Militia inrolled as herein directed, there shall be formed for each battalion, at least one company of grenadiers, light infantry, or rifle-men; and that to each division there shall be at least one company of artillery, and one troop of horse, and one captain, two lieutenants, four serjeants, four corporals, six gunners, six bombardiers, one drummer, and one fifer. The officers to be armed with a sword or hanger, a fusée, bayonet and belt, with a cartridge-box to contain twelve cartridges; and each private or matross, shall furnish himself with all the equipments of a private in the infantry, until proper ordnance and field artillery is provided.

N. B. The laws of the State of Vermont inrol male citizens from 16 to 45, and admit one company of artillery to each regiment, with a field-piece.

Admiralty French Prize Court.

OLIVE BRANCH, WILLIAM BRYANT, Master.

5th July, 1797.

SLADE, in further proof of the property of his party of the cargo, brought in an affidavit of his
said

said party, with exhibits annexed, marked from
 No. 1 to 8, inclusive; No. 1 being a letter, inclosing
 No. 2, 3, 4; No. 2 being an affidavit of Thomas
 Chittenden, Esq. Governor of the State of Vermont;
 No. 3, an affidavit of Jonathan Spafford, Esq. Bri-
 gadier-general of the Militia of the said State; No. 4,
 the Rutland Herald, a public newspaper, of the 14th
 November, 1796; No. 5, a duplicate of No. 2,
 inclosing Nos. 6, 7, and 8; Nos. 6 and 7, two
 sealed packets, believed to contain duplicates of
 Nos. 3 and 4; and No. 8, the Vermont Gazette,
 another public newspaper, of the 18th November,
 1796; all which several papers the said Slade alledged
 to have come to the hands of his said party since the
 last hearing of this cause; and he again repeated the
 prayer by him then made of restitution of the cargo,
 with costs and damages. Hefeltine prayed the Judge
 to pronounce the said further proof to be insufficient
 to reject the same, and to condemn the said cargo.
 The Judge having heard the said proof read, and
 Advocates and Proctors on both sides thereon, pro-
 nounced the said proof not to be sufficient, and
 directed still further proof to be made of the said
 cargo by plea and proof. Slade prayed the Judge
 to direct the cargo to be delivered to the Claimant,
 upon bail given to answer the adjudication thereof.—
 Hefeltine opposed the same; and prayed to be heard
 on his petition. The Judge assigned to hear on
 petition of both Proctors whensoever. Slade then
 prayed the Judge to pronounce that freight, demur-
 rage,

rage, and expences are due to the neutral Master. Hefeltine opposed the same. The Judge directed that question to stand over till further proof of the cargo should be made.

This agrees with the original minute now remaining in the registry of the High Court of Admiralty of England, the same having been carefully collated therewith in Doctors' Commons, London, this 11th day of October, 1797, By me,

ROBERT SLADE,

Proctor for the Claimant.

Extract from an Act of Parliament passed in the thirty-third year of his present Majesty George the Third, entitled, "An Act for the Encouragement of Seamen, and for the better and more effectually manning his Majesty's Navy," Chap. 66. Sect. 23.

"And, for the more speedy proceeding to condemnation or other determination of any prize ship or vessel, goods or merchandizes already taken, or hereafter to be taken as aforesaid, and for lessening the expences which have been usual in such cases, be it further enacted, by the authority aforesaid, That the Judge of the High Court of Admiralty of England, and of any other Court of Admiralty which shall be authorized thereto, or such person or persons

persons who shall be by them commissioned for that purpose, within five days after request made to him or them for that purpose, shall finish the usual preparatory examination of the persons commonly examined in such cases, in order to prove the capture to be lawful prize, or to enquire whether the same be lawful prize or not; and that the proper monition usual in such cases shall be issued by the person or persons proper to issue the same, and shall be executed by the person or persons proper to execute the same, within the space of three days after request in that behalf made; and in case no claim of such captured ship, vessel, or goods, shall be duly entered or made in the usual form, and attested upon oath, giving twenty days notice, after the execution of such monition, or if there be such claim, and the claimant or claimants shall not, within five days from the time of entering such claim, give sufficient security (to be approved by such Court of Admiralty) to pay double costs to the captor or captors of such ship, vessel, or goods, in case the same so claimed shall be adjudged lawful prize, that then the Judge of such Court of Admiralty shall, upon producing to him the said examinations, or copies thereof, and producing to him, upon oath, all the papers and writings which shall have been found, taken in or with such capture, or on board any other captured ship or vessel, regarding the same, or upon oath made that no papers or writings were found, proceed with all convenient speed to sentence, either to discharge and acquit such capture,

capture, or to adjudge and condemn the same as good and lawful prize, according as shall appear to him, upon perusal of such preparatory examinations, and also the papers and writings found taken in or with such capture, or on board any other captured vessel, regarding the same, if any such shall be found; and in case any such claim shall be duly entered or made, and security given thereupon, according to the tenor and true meaning of this Act, and there shall appear no occasion to enter into any other examination, that then such Judge shall, within ten days, if possible, after such claim made and security given, proceed to sentence as aforesaid touching such capture; but in case, upon making or entering such claim, and the attestation thereupon, or the producing of such papers and writings as aforesaid, regarding such captured ship or vessel, or goods, and upon the said preparatory examinations, it shall appear doubtful to the said Judge whether such capture be lawful prize or not, and it shall appear to him to be necessary, according to the circumstances of the case, for the clearing and determining such doubt to have an examination of witnesses, on pleadings given in by the parties, and admitted by the Judge, and such examination shall be desired, and that it shall be still insisted on, on behalf of the captors, that the said capture is lawful prize, and the contrary be insisted on, on the part of the Claimant, that then the said Judge shall forthwith cause such capture to be appraised by persons well skilled in the same, to be
named

named by the parties, and approved and appointed by the Court, and sworn truly to appraise the same, according to the best of their skill and knowledge, for which purpose the said Judge shall cause the goods found on board to be unladen, and (an inventory thereof being first taken, if the Judge shall think necessary, by the Marshal of the Admiralty, or his Deputy,) shall cause to be put into proper warehouses, with separate locks, of the Collector and Comptroller of the Customs, and where there is no Comptroller then of the Naval officer, and the agents or persons employed by the Captors and Claimants, at the charge of the party desiring the same, and shall, after such appraisement, and within the space of fourteen days after the making of the said claim, proceed to take good and sufficient security from the Claimants to pay the Captors the full value thereof, according to such appraisement, in case the same shall be adjudged lawful prize, and shall also proceed to take good and sufficient security from the captors to pay such costs as the Court shall think proper, in case such ship, vessel, or goods shall not be condemned as lawful prize; and after such securities duly given, the said Judge shall make an interlocutory order for releasing or delivering the same to such Claimant or Claimants, or his or their agents, and the same shall be actually released and delivered accordingly.

London,

London, July 10th, 1797.

GENTLEMEN,

After an interview with his Excellency Rufus King, Esquire, Minister of the United States to the Court of London, on the subject of my cause, I have to remark, that by the laws of Great Britain, in the present state of my cause before the Honourable Court of Admiralty, I have a right to receive the property on bail, which I will give, under this clear understanding, that the cargo of the Olive Branch shall be shipped to New York.

That in order to do away ill founded jealousies of hostile designs against any part of the British Empire, I hereby offer to sell to the British Government at a fair price, to be mutually agreed on, the cargo of said ship; but in this case I should expect no further concern in the cause depending at the Doctor's Commons, but that bank bills will be deposited in the Bank of England to answer my drafts in favour of any merchant or manufacturer of Great Britain, to the amount of the sum stipulated; that in case Government do not incline to purchase the said cargo, you prepare and enter pleas, agreeable to the order of Court, that no question may arise for not entering pleas in due time, and that you give me the necessary instruction to carry the same into effect, that I may avail myself of the advantage of the interference of the Government of Vermont

with

with the Government of the United States, through their Minister, in this cause, that justice may be done without delay. I desire that you take the necessary measures to carry these matters into effect with all possible speed, as my patience is almost exhausted. I have the honour to remain,

Your most obedient

Humble servant,

IRA ALLEN.

Doctor Nichols.

Doctor Arnold.

Robert Slade, Esquire.

London, July 13, 1797.

GENTLEMEN,

Eight months having nearly elapsed since my detention, when sailing under neutral colours, the ship and every article on board American property, bound to a neutral port, which appeared clearly by the ship's papers and other papers on board the ship Olive Branch, which was also proved by the evidence of Captain Bryant, and all the ship's crew, which ought to have cleared the ship and cargo in the first instance; after this long elapse of time, not the least evidence has appeared against the cargo of said ship, or its destination to New York; but to the reverse of that I have proved that for four years past public measures have been

H taken

taken by the Governor and Militia Officers of the State of Vermont to arm the Militia; that they were very deficient in arms; that as Major General I refused to review the said Militia because they were deficient in arms; that I made it a matter of public conversation that I went to purchase arms in Europe for the use of said Militia before I left America, on the passage, on my arrival in London, before pensioned loyalists and British officers that I had never seen but a few days before.

That I made the purchase of arms public in Paris, mentioning in June that I was in treaty with the French Government for arms, and in July, 1796, mentioned that I had completed a contract for 20,000 muskets, furnished with their bayonets, and 24 brass field-pieces for the use of the Militia aforesaid; agreed with Mr. Putman to ship them for me to New York; I also repeatedly shewed the written request of Governor Chittenden for that purpose; wrote an advertisement, addressed to the Militia Officers of Vermont, on the subject of said purchase, on the 15th of July last, in Paris, sent it by the way of London to America, and it was published in the newspapers there, before the capture of said ship, these facts are supported by fourteen depositions, taken very remote from each other, alluding to transactions of four years past in three different countries, viz. America, Great Britain, and France, yet all happily agree in supporting each other, and
that

that said arms are neutral property, intended for the use of the Militia of Vermont. In addition are Governor Chittenden and General Spafford's depositions, clearly proving that I was requested by Governor Chittenden to purchase arms and other implements of war for the use of said Militia, and that they well knew it to be my intention to purchase arms for the use aforesaid, before I left America in 1795; with these depositions are two Vermont newspapers, containing said advertisement, a true copy of which is amongst the papers Captain Gould took from me; this, together with the contracts of purchase, acknowledging the payment of 160,240 livres, stipulating the payment of the remainder, under the hand and seal of the French Minister, and my own hand and seal; the delivery and possession of the property are not, as appears by order of Court, sufficient to prove my right to said cargo and its destination; was there ever a cause so clearly and fully proved in a Court of Admiralty since Julius Cæsar landed in Great Britain? But after all this, the question is, Whether I may be even permitted to receive the property on bail. When there is an existing law of Great Britain in my favour, not moving for is voluntarily suspending my right, I therefore say this day, in my name, as a citizen of the United States, intitled to the justice of the laws of Great Britain, ask for, and insist on my legal right, to receive my property on bail. At the same time, was said cargo this day delivered to

me on bail, I will sell it to the British Government on the principles stated in my letter to you of the 10th instant, if they chuse to purchase. I urge this decision, as I cannot attend another term of Court.

I am, &c. &c. &c.

IRA ALLEN.

Doctor Nichols.

Doctor Arnold.

Robert Slade, Esquire.

In the course of the Advocate's pleas for the captors, he observed, that it was well known, there were such places as Upper and Lower Canada, and had it not been for that, Mr. Allen's contract would have been legal, and consistent with the Law of Nations.

Memorandum of a proposal respecting the cargo of the ship Olive Branch, for consideration and amendment, viz. I will transfer the property thereof to such citizens of the United States that are resident in London, that will enter into bail in the Court of Admiralty, and will be accepted by the court, on the following conditions, viz. That the property be by them consigned to his Excellency John Jay, Esq; of New York, there to remain till the Governor or Legislature of Vermont shall make a fair statement of the

the deficiencies of arms in the Militia of Vermont, particularising the regiments, brigades, and divisions, that it may be known in New York how to distribute said arms, that the quantity so stated shall be sent to the different parts of Vermont; that then a sufficiency shall be sent to supply the deficiency in the counties of Clinton and Washington, in the State of New York, if enough remains, and if any then should remain, they should be sold to citizens of the State of New York, as John Jay, Esq; and Ira Allen, should agree, on the said Allen's reserving to himself the right of stipulating for the price and terms of payment with all such purchasers. But that no sales or transfers of any of such property take place, till sufficient security be deposited with John Jay, Esq; to answer the bail given in the Court of Admiralty.

I am, &c.

IRA ALLEN.

London, August 5th, 1797.

Doctor Nichols.

Doctor Arnold.

Robert Slade, Esq;

Great Cumberland Place, 9th Aug. 1797.

MY LORD,

I was in hopes, after I had the honour to communicate to your Lordship the opinion of the American government, concerning the arms claimed by General Allen,

Allen, that they would have been restored without further delay; but as the captors refuse to give their consent, the Judge appears unwilling to decree their restoration; the cause is now in a situation that renders it impossible to conjecture, even with any degree of precision, when it is likely to be decided; the claimant, according to the provisions of the prize act, is in the present stage of the suit, entitled to receive the property on bail; this, though embarrassing, would have a tendency to remove, or to confirm the doubts that are said to have existed respecting its destination and ownership; for if these arms are carried to New York, and sold and distributed amongst the American Militia, there will no longer exist any question concerning their owner or destination.

The rule for the delivery of property in the possession of the prize court, upon bail, seems to be peremptory; yet if a construction is given to it, that shall enable the captor to prevent the liberation of the property on bail, by withholding his consent, the claimant in this case may despair of receiving it, because the distribution and use of these arms, according to the declared intentions of the claimant, will destroy these doubts and suspicions, from the existence of which, the captors may hope for a condemnation; the case stands thus, on the one hand the delivery of the property on bail cannot be injurious to the captors, for, if condemned, the pledge is of equal

equal value with the property; if liberated, on the other hand, the refusal to deliver on bail will not only deprive the claimant of the possession of his property for an indefinite time, but he will thereby be denied the means of proving, by its destination and use, that he is the true and lawful owner thereof.

Under these circumstances, I take the liberty to request your Lordship's interference in such way as may be deemed proper, in order that these arms may be delivered on bail.

With perfect consideration and respect,

I have the honour to be,

Your Lordship's most obedient

Humble servant,

RUFUS KING.

Right Hon. Lord Grenville, &c. &c.

LORD GRENVILLE presents his compliments to Mr. King, and has the honour to inform him, in answer to his note of the 9th current, that the captors of the arms found on board of the American ship Olive Branch, having refused to consent to their being delivered to General Allen on bail, and the Judge of the Court of Admiralty having made a decree against such a delivery, it is impossible for his

his Majesty's Government to interfere in this case, which must be left to the decision of the Tribunal before whom it is depending.

Downing-street, Aug. 18th, 1797.

Abstract of written Memorials and Conversation to and with his Grace the Duke of Portland, one of His Majesty's principal Secretaries of State, in the interval of the 18th of January, 1796, to the 19th of August, 1796, on the subject of cutting and maintaining a Canal from Lake Champlain to the River Saint Laurence.

IN an interview with his Grace, General Allen laid down the advantages that would mutually result to the two countries, if such a communication should be carried into effect. His Grace objected to any share of the expence on the part of the British Government, but expressed his readiness to receive, and to consider of proposals for carrying the same into execution on other principles. General Allen, in his Memorials, &c. offered to cut said Canal at his own expence, on condition that he should be secured in an interest of his money, by an order from Government, assigning a tonnage on vessels, &c. navigating this Lake, to the amount of said interest; and that shipping built in said Lake, by the citizens of Vermont, should be permitted to pass to
and

and from the open seas, paying such tonnage as should be deemed reasonable on passing Quebec; that the manufactures, raw materials, and produce of Vermont, should be permitted to pass to the open sea; that the manufactures, goods, &c. of Great Britain, should be permitted to be imported in the shipping of Vermont into the said State, without paying any duty on such exports or imports, by Act or Acts of the Parliament of Great Britain, or the Legislature of Lower Canada. That contiguous to said Lake was a fertile country, abounding in lumber, iron ore, marble, &c. that the soil produced wheat, Indian corn, peas, barley, hemp, grass, &c. in great abundance; that the country was erected into a settlement after the conquest of Canada, by the late Lord Amherst, in 1761, and is now estimated at a population of 150,000 souls. That Great Britain, through the medium of the said Canal and Navigation, would, in fact, reap the advantage of the trade of Vermont, and of the northern part of the State of New York, which parts, contiguous to Lake Champlain and Iroquois, would then find it their interest to become a part of the State of Vermont. That such reciprocal navigation and interest in the Canal, would cement and promote friendship betwixt the people of the two Canadas, and those near the Lake and the Iroquois, and would tend very much to strengthen the Treaty made betwixt Great Britain and the United States of America in 1794, under which Treaty British ships are permitted to

to navigate Lake Champlain for commercial purposes. That in case of war betwixt any powers, except those of Great Britain and America, the commerce of said Lake might be conveyed to Europe in Vermont or British bottoms, free from capture, high insurance, or expence of convoy. Hence the enterprizing inhabitants of Vermont would find it their interest to support the government of Great Britain in Canada, whilst the remainder would be satisfied with the Canal and commerce. In peace or war, it would render the price of salt, English goods, &c. cheap, and in time of war, the exports of Vermont would bear a high price, in consequence of the ease and safety of transportation. The people of Vermont thus situated, would be averse to war; they would, in fact, be a neutral body betwixt two great nations; whilst their Representatives in the Legislature of the United States would oppose every idea of hostilities between Great Britain and the United States, on principles of mutual interest; thus the most permanent contracts are established, and the blessings of peace and prosperity the rewards.

F I N I S.

2.
,
e
e
,
e
t
t
e
e
h
s
e
e
;
o
e
y
e
s
d

A
CONTINUATION
OF THE
CAUSE,
RESPECTING THE
CARGO
OF THE
SHIP OLIVE BRANCH.

LONDON, JANUARY 3d, 1798.

CONTINUATION

OF THE

CARROLL

SHIP OF THE BRANCH

In the Admiralty Prize Court.

The OLIVE BRANCH, W^M. BRYANT, Master.

*Case for the joint Opinions of Dr. NICHOLL
and Dr. ARNOLD.*

THE cargo of this ship having been claimed by Ira Allen, Esquire, as his property, the admission of such claim came on for hearing on the 13th June, 1797, before the Judge of the Admiralty Court, who, by decree of the same day, admitted the same, but directed further proof to be made of the property of said cargo; whereupon the Proctor for the Claimant immediately brought in several attestations, and alledged that he had delivered copies thereof to the King's Proctor upwards of a month since, and prayed the Judge to hear upon the admission of such further proof immediately, which being objected to by the King's Proctor, the Judge assigned to hear on admission thereof whensoever.

June 21. The admission of this further proof was heard in part, and the cause assigned for further informations next Court.

June 29. The Proctor for the Claimant brought in an attestation of his party, with two exhibits annexed; also attestations of William Golbourn and Isaac Scott, in further proof of the property, which

having been read, and counsel heard, the Judge assigned the cause for sentence on Wednesday next.

July 5. The Proctor for the Claimant, in further proof of the property, brought in an affidavit of his party, with eight exhibits annexed, all which he alledged to have come to the hands of his party since the last hearing of the cause.

The Judge having heard said further proofs read, and Advocates and Proctors on both sides, pronounced the said proof not to be sufficient, and directed still further proof to be made of the said cargo by plea and proof. Whereupon the Claimant's Proctor prayed the Judge to direct the cargo to be delivered to the Claimant, upon bail given to answer the adjudication thereof, which being opposed by the King's Proctor, the Judge assigned to hear on the petition of both Proctors whensoever,

August 8. The Proctor for the Claimant having received information from the King's Proctor that if he thought fit again to move the Judge for the delivery of the cargo upon bail, he would not give any opposition thereto; he (the Claimant's Proctor) again prayed the Judge on this day to deliver the cargo, upon bail being given to answer the adjudication thereof, the Judge, after hearing Counsel thereon, rejected the petition of the Claimant's Proctor.

September

September 20. It having been intimated by the King's Proctor that he would not only *not oppose*, but even that he would *consent* to the delivery of the cargo upon bail, the Proctor for the Claimant again moved the Judge to direct the same accordingly. The Judge having heard an Advocate on the part of the Claimant, refused the petition.

By the Act 33d George III. Chapter 66, Sect. 23, it is directed, in cases of further proof, the ship or goods shall be delivered to the Claimant, upon bail being given to answer the adjudication.

You are desired to consider the circumstances of this case with relation to the Act of Parliament above alluded to, and the right of the party to the benefit thereby intended him, and to advise whether any, and if any, what other steps can be taken on his behalf, either in the Admiralty or Appeal Court, or in the Courts of common law, to obtain the delivery of the cargo in question to him, on bail being given to answer the adjudication thereof.

OPINION.

We know of no further step that can be taken on behalf of the Claimant for this purpose in the Court of Admiralty.

K 3

We

We think this not to be matter of appeal, and as the case is not before the Court of Appeal, we do not see how any application can be made to that Court in the business.

Whether any remedy can be given to the Claimant in the Court of common law, he must be informed by Gentlemen practising in those Courts.

J. NICHOLL.

J. H. ARNOLD.

Doctor's Commons, Nov. 14, 1797.

In the King's Bench.

IRA ALLEN, of Colchester, in the county of Chittenden, and State of Vermont, in North America, a native citizen of the United States, and Major General in the Militia of the said State of Vermont, maketh oath and faith, That he is the true, lawful, and sole owner and proprietor of the cargo of the American ship Olive Branch, whereof Wm. Bryant was master at the time of the capture and seizure thereof by his Majesty's ship of war the Audacious, Davidge Gould, Esquire, commander, whilst in the prosecution of a voyage from Ostend to New York; and this deponent further faith, that the said cargo consisted of 15,000 muskets, with bayonets, or thereabouts, and 21 brass four-pound field pieces, with 3 gun-carriages, which had been collected by this deponent in France, and shipped on board the said Ship

Ship Olive Branch at Ostend, in the beginning of November, 1796, absolutely and *bona fide* destined for the use of the Militia of this State of Vermont, whereof this deponent was and is Major General Commandant, and for the supplying of which these arms had been purchased by this deponent; and this deponent further saith, that such capture was made on the 19th of the said month of November, about 80 leagues to the westward of Scilly, and the said ship and cargo being brought to Portsmouth by his Majesty's said ship Audacious, and the said cargo being libelled in the High Court of Admiralty, this deponent, on or about the 24th of February, 1797, caused a claim to be entered thereto, as his property, in due form; and this deponent further saith, that the admission of such claim came on for hearing on the 13th of June, 1797, before Sir James Marriot, Knight, the Judge of the said Admiralty Court, who, by decree of the same day, admitted the said claim, but directed further proof to be made of the property of the said cargo, whereupon the Proctor for this deponent carried in several attestations in respect thereof, and upon hearing such further proofs read, and Advocates and Proctors on both sides, the Judge, upon the 5th of July, 1797, pronounced the same not to be sufficient, and directed still further proof to be made of the said cargo, by plea and proof, and thereupon the Proctor for this deponent, pursuant to the Act of Parliament in that case made and provided, prayed the Judge

to direct the said cargo to be delivered up on bail, to answer the adjudication thereof, which was then opposed by the King's Proctor, and refused by the said Judge; and this deponent further saith, that on the 8th of August last, the Proctor for this deponent having, as this deponent has been informed, and which information he believes to be true, received intimation from the King's Proctor that if he thought fit again to move the Judge to deliver the cargo upon bail, he would not give any opposition thereto, he (this deponent's Proctor) again prayed the Judge to deliver the cargo, upon bail being given to answer the adjudication thereof, but the Judge, after hearing Counsel thereon, rejected the petition of this deponent's Proctor; and this deponent further saith, that it having been intimated by the King's Proctor, and likewise by the Agent of the Captors, as this deponent has been also informed, and which information he believes to be true, that he, the King's Proctor, would give his consent to the delivery of the said cargo upon bail, the Proctor for this deponent, in consequence of the said intimation last mentioned, upon the 28th of September last, again moved the Judge, Sir James Marriot, to direct the same accordingly, but the said Judge having heard an Advocate on the part of this deponent, rejected the said last-mentioned petition; and this deponent further saith, that very great and material injury will be occasioned to this deponent's said property, by the detention thereof, pending the
said

faid proceedings by plea and proof, the same having already been under adjudication nearly twelve months, and consequently considerably damaged by rust, &c.

IRA ALLEN.

Sworn in Court this 18th day }
of November, 1797.

BY THE COURT.

In the King's Bench.

ROBERT SLADE, of Doctor's Commons, Proctor to Ira Allen, Esquire, the Claimant in the High Court of Admiralty of the cargo of the Ship Olive Branch, captured and libelled in the said Admiralty Court by Davidge Gould, Esquire, commander of his Majesty's ship the Audacious, maketh oath and faith, That the several paper writings hereunto annexed, marked with the letters A, B, C, D, and E, are and contain true and perfect copies of the claim of the said Ira Allen, exhibited in the said Court upon the 24th of February, 1797, and of four several orders or decrees made in the said prize cause by the Right Worshipful Sir James Marriot, Knight, the Judge of the said High Court of Admiralty; and this deponent further faith, that the three several applications or prayers made by or on the behalf of this deponent as Proctor, to and for and on behalf of the said Ira Allen, to the said Judge, for delivery of the said cargo, upon bail being given to answer the adjudication thereof, as expressed in
the

the said papers severally marked C, D, and E, were made pursuant to the Act of Parliament in that case made and provided, and according to the forms and course of proceedings of the said Admiralty Court, and by advice of the Advocates employed as Counsel for the said Ira Allen in the said cause; and this deponent further saith, that the said cargo now remains detained, by reason of the refusal of the said Judge to grant the order for delivering the same on bail, and that by the mode of ascertaining the property directed in the said prize suit, by the said Judge, by plea and proof, there is great probability the said cause will not be brought to a final adjudication for two years or upwards.

ROBT. SLADE.

Sworn in Court this 18th day }
of November, 1797.

BY THE COURT.

A.

OLIVE BRANCH, WM. BRYANT, Master.

24th Feb. 1797.

THE claim of Ira Allen, Esq; of Colchester, in the county of Chittenden, and State of Vermont, in North America, a citizen of the United States, on behalf of himself, the true, lawful, and sole owner and proprietor of

15,000

15,000 muskets, and }
15,000 bayonets } or thereabouts

21 brass four-pound field-pieces, and
3 gun carriages

being the cargo laden on board the said ship Olive Branch, William Bryant, master, at the time of the capture and seizure thereof by his Majesty's ship of war Audacious, Davidge Gould, Esq; commander, and brought to Portsmouth, whilst in the prosecution of a voyage from Ostend to New York, for the said goods as American property, and for all such loss, costs, charges, damages, and expences as have arisen, or which shall or may arise, by reason or means of the seizure and detention thereof as aforesaid.

IRA ALLEN.

J. NICHOLL, S. &c. &c.

This agrees with the original claim now remaining in the Registry of the High Court of Admiralty of England, the same having been carefully collated therewith, in Doctor's Commons, London, this 16th day of October, 1797, By me,

ROB. SLADE, Proctor for the Claimant.

B.

OLIVE BRANCH, WM. BRYANT, Master.

June 12th, 1797.

THE Judge having heard further informations by Counsel, admitted the claim for the cargo, but directed

rected further proof to be made of the said cargo; Slade, in further proof thereof, brought in attestations from No. 1 to No. 9 inclusive, and alledged that he had delivered copies thereof to the King's Proctor upwards of a month since, and prayed the Judge to hear upon admission of such further proof immediately. Hefeltine objected thereto, and prayed the admission of said further proof to be continued to whensoever the Judge shall appoint. The Judge assigned to hear on admission thereof whensoever.

C.

Admiralty French Prize Court.

OLIVE BRANCH, WILLIAM BRYANT, Master.

5th July, 1797.

SLADE, in further proof of the property of his part in the cargo, brought in an affidavit of his said party, with exhibits annexed, marked from No. 1 to 8, inclusive; No. 1 being a letter, inclosing No. 2, 3, 4; No. 2 being an affidavit of Thomas Chittenden, Esq; Governor of the State of Vermont; No. 3, an affidavit of Jonathan Spafford, Esq; Brigadier-general of the Militia of the said State; No. 4, the Rutland Herald, a public newspaper, of the 14th November, 1796; No. 5, a duplicate of No. 2, inclosing Nos. 6, 7, and 8; Nos. 6 and 7, two sealed packets, believed to contain duplicates of

Nos. 2

Nos. 3 and 4; and No. 8, the Vermont Gazette, another public newspaper, of the 18th November, 1796; all which several papers the said Slade alledged to have come to the hands of his said party since the last hearing of this cause; and he again repeated the prayer by him then made of restitution of the cargo, with costs and damages. Hefeltine prayed the Judge to pronounce the said further proof to be insufficient to reject the same, and to condemn the said cargo. The Judge having heard the said proof read, and Advocates and Proctors on both sides thereon, pronounced the said proof not to be sufficient, and directed still further proof to be made of the said cargo by plea and proof. Slade prayed the Judge to direct the cargo to be delivered to the Claimant, upon bail given to answer the adjudication thereof.—Hefeltine opposed the same; and prayed to be heard on his petition. The Judge assigned to hear on petition of both Proctors whensoever. Slade then prayed the Judge to pronounce that freight, demurrage, and expences are due to the neutral Master. Hefeltine opposed the same. The Judge directed that question to stand over till further proof of the cargo should be made.

This agrees with the original minute now remaining in the registry of the High Court of Admiralty of England, the same having been carefully collated therewith in Doctors' Commons, London, this 11th day of October, 1797, By me,

ROBT. SLADE, Proctor for the Claimant.

D.

August 8. SLADE prayed the Judge to deliver the cargo, upon bail being given to answer the adjudication thereof. The Judge having heard Counsel thereon, rejected Slade's petition.—Present Hefeltine.

E.

September 20. BEDFORD, for Slade, prayed the Judge to direct the cargo to be delivered, upon bail to answer the adjudication thereof; the Judge, having heard an Advocate on Slade's Client's behalf, rejected Bedford's petition.

Saturday next after the Octave of St. Martin, in the thirty-eighth Year of King George the Third.

LONDON. Upon reading the several affidavits of Ira Allen, Major General in the Militia of the State of Vermont, in North America, and Robert Slade, Esquire, and four paper writings thereto annexed, It is ordered, That Friday next be given to the Right Worshipful Sir James Marriot, Knight, Judge of the High Court of Admiralty of England, to shew cause why a Writ of Mandamus should not issue, directed to him, commanding him to deliver to the said Ira Allen the cargo of the ship Olive Branch, upon bail to answer the adjudication thereof, pursuant

to the statute in such case made and provided, upon notice of this rule to be given to the said Sir James Marriot, and also to his Majesty's Proctor in the said Court, and the Proctor for the Captors of the said ship Olive Branch respectively, in the mean time. On the motion of Mr. Erskine,

BY THE COURT.

Friday next after the Octave of St. Martin, in the thirty-eighth Year of King George the Third.

LONDON. Upon hearing Counsel on both sides, It is ordered, That the sixth day of the next Term be peremptorily further given to the Right Worshipful Sir James Marriot, Knight, Judge of the High Court of Admiralty of England, to shew cause why a Writ of Mandamus should not issue, directed to him, commanding him to deliver to Ira Allen, Major-General in the Militia of the State of Vermont, in North America, the cargo of the ship Olive Branch, upon bail to answer the adjudication thereof, pursuant to the statute in such case made and provided; and it is further ordered, That all affidavits to shew cause be filed a week before the next term.

Mr. Erskine for the Prosecutor,

Mr. Percival for the Defendant.

BY THE COURT.

In

In the preceding pamphlet, General Allen chose, from motives of delicacy, to support his right to the cargo of said ship Olive Branch to the public, by the affidavits of others; but subsequent matters has induced his friends to urge him to permit the two following affidavits to be published.

Depositions of witnesses had and taken at the house of Ann Palmer, widow, bearing the sign of the George, in Portsmouth, in the County of Southampton, on the twelfth day of December, in the year of our Lord, one thousand seven hundred and ninety-six, and in the thirty-seventh year of the reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth, upon the several interrogatories hereunto annexed, by virtue of his Majesty's Commission, issuing out and under the seal of his High Court of Admiralty of England, bearing date the twentieth day of February, one thousand seven hundred and ninety-three, to the Mayor of Portsmouth for the time being, Harry Gibbs, Junior, James Purnose Maxwell, Richard Burwood, William Garrett, Harding Grant, Andrew Lindegreen, Moses Hawker, and Daniel Grison, Esquires, jointly and severally directed before me, the said Harry Gibbs, Junior, upon the oaths of the witnesses, in the presence of Moses Greetham, Jun. Notary Public.

*IRA ALLEN, of Colchester, in the State of Vermont,
in North America, aged about forty-two Years,
being sworn and examined, deposeth as followeth :*

1. To the first interrogatory this deponent saith,
That he was born at the Town of Cornwall, in the
County of Litchfield, in the State of Connecticut,
in North America, but for about twelve years past
has resided, when at home, at Colchester aforesaid;
that he esteems himself a citizen of the United States
of North America, was heretofore a subject of the
King of Great Britain, but has never been a subject
of any other Prince or State; and that he has been
admitted a Member of the Council in the State of
Vermont, a Member of the Legislature, was Treas-
urer of the State of Vermont, and is now a Major
General in the service of the Militia of the State of
Vermont.

2. To the second interrogatory this deponent saith,
That at the time of the taking and seizing the ship
and her lading, concerning which he is now exa-
mined, he was present on board her, and that she
had not any commission.

3. To the third interrogatory this deponent saith,
that the said ship and goods, concerning which he is
now examined, were taken and seized about eighty
leagues to the westward of Scilly, on or about the

nineteenth of November last past, about two o'clock in the afternoon, by his Britannic Majesty's ship of war the Audacious, commanded by Captain Gould; that the reason given for such seizure was, that the lading consisted of arms and military stores, and that the said Captain Gould had orders to bring all neutral ships so laden into port; that she was brought to the port of Portsmouth; that she sailed under American colours, and had not any other colours on board, as he knows; that no resistance was made at the time when the said ship was taken, and that there was not any other ship of war in sight at the time of the capture.

4. To the fourth interrogatory this deponent saith, That Mr. William Bryant was Master or Commander of the ship; that he has known him since the latter end of September last past; that he first saw him at Ostend, and does not know who appointed him to the command of the said ship; that he took the possession of her in the State of Virginia, in North America, as he has heard; that he was born, as he believes, in the State of Massachusetts, in North America, but that he cannot further to this interrogatory depose.

5. To the fifth interrogatory this deponent saith, That the said ship is of the burthen of about one hundred and sixty-eight tons; that the number of mariners (officers and all included) on board the said ship

ship was eight, as he believes, besides this deponent, who was a passenger on board her, who were all Americans, as he understood them to be; and that he cannot further to this interrogatory depose.

6. To the sixth interrogatory this deponent saith, That he, this deponent, had not any part, share, or interest in the said ship, concerning which he is now examined, but that he is the owner of the whole of the lading on board her; that neither the said master, or any other of the officers or mariners on board her, had any part, share, or interest in the said ship, as he knows of; that he, this deponent, did not belong to the said ship at the time she was seized and taken, but was a passenger on board her, in the capacity of owner of the lading; that he has known the said ship since the latter end of September last past; he first saw her at Ostend, and that he does not know where she was built.

7. To the seventh interrogatory this deponent saith, That the name of the said ship is the Olive Branch, of Boston; that he does not know how long she has been so called, nor doth he know that she hath ever been called by any other name or names; that he doth not know whether she had any passport or sea-brief on board, not having perused the papers belonging to her; that her last voyage began at Ostend, where she took on board a cargo or lading of muskets, bayonets, brass four-pound field-pieces

and gun-carriages, with which she set sail from thence on or about the eleventh day of November last past, and was bound therewith to New York, in North America, where the cargo was to have been delivered, and the voyage to have ended, if she had not been seized as aforesaid; and that after the said ship sailed from Ostend aforesaid, she did not sail to or stop at any other port or place previously to the capture, except that she dropped anchor in Dunkirk Roads for about an hour, waiting for the tide to rise, to go over the Bar, and having been stopped by the Commodore of a small French fleet, then laying there.

8. To the eighth interrogatory this deponent saith, That the lading the said ship carried, at the time of her first setting sail in her last voyage from Ostend aforesaid, was the same which she had on board at the time when she was taken, and consisted of about fifteen thousand muskets, fifteen thousand bayonets, twenty-one brass four-pound field pieces, and three gun-carriages, which was all put on board in several days, in the months of October and November last past.

9. To the ninth interrogatory this deponent saith, That he cannot depose.

10. To the tenth interrogatory this deponent saith, He cannot depose.

11. To

11. To the eleventh interrogatory this deponent saith, That the whole of the said lading was put on board at Ostend aforesaid, at the times before mentioned.

12. To the twelfth interrogatory this deponent saith, That he, this deponent, is lader, owner, and consignee of the said goods; that he agreed with the Government of the French Republic, under a contract with Monsieur Petrel, the Minister at War, signed by him and this deponent, to purchase twenty thousand muskets, furnished with bayonets, and twenty-four cannons of brass four-pounders, and six cannon-carriages, and six cannon-waggon; that he paid one fifth part of the value of the said goods to the Government of the French Republic, amounting to one hundred and sixty thousand two hundred and forty livres, and hath agreed, under and by virtue of the said contract, to pay the remainder of the value of the same goods in seven years, with interest at five per cent. yearly, to be computed from the time of the delivery of the said goods on board the said ship; that the whole of the said muskets, bayonets, brass cannons, carriages and waggon, so agreed to be purchased as aforesaid, were not taken on board the said ship, there not being room to stow the same on board her; that the said goods now on board the said ship were to be delivered at New York aforesaid, for the real account, risk, and benefit of this deponent, and no other person; and that he can take

upon himself to swear, that at the time of the lading the cargo, and at this present time, and also if the said goods shall be restored, and unladen at New York aforesaid, the goods did, do, and will still belong to him, and to no other person.

13. To the thirteenth interrogatory this deponent faith, That there were three bills of lading signed for the goods seized on board the said ship, none of which were false or colourable, and that there were not any bills of lading signed which were different in any respect from those which were on board the said ship at the time she was taken.

14. To the fourteenth interrogatory this deponent faith, That there are not in Great Britain, as he knows of, any bills of lading, invoices, letters, or instruments relative to the ship and goods, concerning which he is now examined, except those which were taken possession of by the said Captain Gould at the time she was seized, and those which he now delivers up to the Commissioners acting in this his examination, and marked from No. 1 to No. 4, inclusive.

15. To the fifteenth interrogatory this deponent faith, That there was a charter-party signed for the voyage on which the said ship, concerning which he is now examined, was seized and taken, made between Stephen Thorn, Esquire, of New York, and the aforesaid William Bryant, bearing date the eighth day

day of September last past, and which was assigned by the said Stephen Thorn to this deponent, by an assignment on the back thereof, bearing date the fifth day of November last past, at Ostend, and which was also taken possession of by the said Captain Gould, and to which he refers for the contents thereof.

16. To the sixteenth interrogatory this deponent saith, That he cannot particularly recollect the several papers, bills of lading, letters, or other writings which were on board the ship at the time she took her departure from Ostend aforesaid, but that none which were then on board were afterwards burnt, torn, or thrown overboard, destroyed or cancelled, concealed or attempted to be concealed, as he knows of, but were all either taken possession of by the said Captain Gould, or given up by this deponent to the Commissioners acting in this his examination as aforesaid.

17. To the seventeenth interrogatory this deponent saith, That the said ship has never been seized as prize, and condemned as such, as he knows of.

18. To the eighteenth interrogatory this deponent saith, That he hath not sustained any loss by the seizing and taking the said ship and cargo, concerning which he is now examined, as he knows of, except such as may arise from her detention, not

having been on board her since she was seized as
aforesaid.

19. To the nineteenth interrogatory this deponent
saith, That he doth not know whether the said ship
is insured or not, but the said goods are not in-
sured.

20. To the twentieth interrogatory this deponent
saith, That in case he had arrived at New York
aforesaid, the said cargo, on being unladen, would
have continued the property of this deponent, who
was to take the chance of the market for the sale
thereof, he having been desired, by the Governor of
the State of Vermont aforesaid, to purchase arms for
the Militia of that State, who were not well provided
therewith, and which he did on and for his own ac-
count, risk, and benefit, and for the purpose of
which he was not provided with money by the said
Governor of the State of Vermont, or the Govern-
ment of the United States of North America.

21. To the twenty-first interrogatory this deponent
saith, That he cannot depose.

22. To the twenty-second interrogatory this depo-
nent saith, That the said cargo was partly taken on
board the said ship from the Quay at Ostend afore-
said, and partly from boats which brought the same
on board her as she lay in the harbour there, at the
time before mentioned.

23. To

23. To the twenty-third interrogatory this deponent faith, That there were not in any country besides Great Britain, or on board any ship or vessel as he knows of, any bills of lading, invoices, instruments, papers, or documents relative to the said ship and cargo, except the counterparts of the contracts made by this deponent with the Minister at War as aforesaid, and which were left with him at Paris, and except advertisements addressed to the Militia Officers of the State of Vermont, of his this deponent's having purchased arms for the use of such Militia, of which he sent three copies thither to be published in the public papers.

24. To the twenty-fourth interrogatory this deponent faith, That there were not any papers delivered out of the said ship after she sailed from Ostend aforesaid, and carried away in any manner whatsoever, before she was seized as aforesaid.

25. To the twenty-fifth interrogatory this deponent faith, That bulk was not broken during the voyage in which she was taken, before the seizure of the said ship, nor since, as he knows of.

26. To the twenty-sixth interrogatory this deponent faith, That he, this deponent, was a passenger on board the said ship as owner of the said cargo; that he is, as aforesaid, a Major General of the Militia in the State of Vermont aforesaid; that he came
on

on board the said ship at Ostend, on or about the eleventh day of November last past, and was finally destined to New York aforesaid, for the purpose of disposing of the said cargo; that there were not any officers, soldiers, or mariners secreted on board, nor any of his Britannic Majesty's subjects on board, as he knows of, or secreted or confined at the time of the capture.

27. To the twenty-seventh interrogatory this deponent saith, That all the passports, charter-parties, bills of lading, invoices, and papers which were found on board the said ship, or have been delivered up by him, this deponent, as aforesaid, to the Commissioners acting in this his examination, are entirely true and fair, and none false or colourable; that he does not know of any matter or circumstance to affect their credit; that he, this deponent, had a let-pas or letter of safe conduct from and under the signature of his Excellency Thomas Chittenden, Esquire, Governor of the State of Vermont, bearing date the twenty-seventh day of October, one thousand seven hundred and ninety-five, which was taken possession of by the said Captain Gould, and that he cannot further depose.

28. To the twenty-eighth interrogatory this deponent saith, That he hath written or signed the before mentioned contracts for the purchase of the said cargo, and other letters and papers relative thereto, which

which have all been delivered up as aforesaid, except the aforementioned advertisements, and the letters enclosing the same sent to America, other letters written to the said Minister at War, respecting the delivery of the said cargo at Ostend, letters written to his friends in America and at London, and other letters written to the said Captain Gould, relative to the seizure of the said ship and cargo; and that he cannot further to this interrogatory depose.

29. To the twenty-ninth interrogatory this deponent saith, That the said ship was steering her course, at the time of her being first pursued and taken, towards New York aforesaid; that her course was not altered upon the appearance of the vessel by which she was taken; that her course at all times, when the weather would permit, was directed towards New York aforesaid; and that her course was not altered at any time after she sailed from Ostend aforesaid, to any other port or place.

30. To the thirtieth interrogatory this deponent saith, That he cannot depose.

31. To the thirty-first interrogatory this deponent saith, That there were not any guns mounted on board the said ship, nor any arms or ammunition belonging to her, as he knows of; that there were not any other guns, or other arms or ammunition mentioned in this interrogatory, or any sort of warlike or
naval

naval stores, except the before-mentioned cargo; on board her, nor were any such thrown overboard to prevent suspicion at the time of the capture, nor concealed on board under the name of merchandize, or any other colourable application, in the ship papers, as he knows of; that the said cargo was intended for the use of the Militia of the State of Vermont aforesaid, and to be disposed of as he, this deponent, should think proper; that he, this deponent, has heard that there is an ordinance placart, or law existing in France, forbidding the exportation of arms or ammunition, or warlike or naval stores, by private persons from thence, without licence; but that the said cargo was put on board by order of the said Minister at War, at the times before mentioned, in pursuance of the said contract.

32. To the thirty-second interrogatory this deponent saith, That he hath, in his answers to the foregoing interrogatories, set forth the whole which he knows or believes, according to the best of his knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which he is now examined, at the time of the capture.

IRA ALLEN.

Sworn before me,

HENRY GIBBS.

In the presence of

M. GREETHAM, Jun. Not. Pub.

French Prize Court.

OLIVE BRANCH, WILLIAM BRYANT, Master.

24th February, 1797.

APPEARED personally Ira Allen, Esq; of Colchester, in the County of Chittenden, and State of Vermont, in North America, and a citizen of the United States, and made oath, that he is the true, lawful, and sole owner and proprietor of

15,000 muskets, and	} or thereabouts
15,000 bayonets,	
21 brass four-pound field-pieces, and	
3 gun carriages	

being the cargo laden on board the said ship Olive Branch, whereof William Bryant was Master, at the time of the capture and seizure thereof by his Majesty's ship of war Audacious, Davidge Gould, Esq; Commander, and brought to Portsmouth, whilst in the prosecution of a voyage from Ostend to New York; and this deponent further made oath, that he is possessed of considerable landed property, and is a Major General in the service of the Militia of the State of Vermont aforesaid, and that the said Militia being very insufficiently provided with arms, he, the deponent, has been for a long time desirous of getting them armed and equipped in a complete manner, and having formed a plan of coming to Europe,

Europe, in order to solicit the British government to engage in the making of a navigable canal from Lake Champlain (on the banks of which he owns an estate of near fifty miles in extent off the lake shore) he determined, at the same time, to take measures during his stay in Europe, to procure arms for the Militia aforesaid, and to transact other business of great moment; and in regard to the procuring arms for the Militia the deponent further saith, that he conversed, prior to his departure from America, with several persons, and particularly with John Andrew Graham, Aid-de-Camp to Thomas Chittenden, Esq; Governor of the State of Vermont, and with Nathan Burr Graham, then Major of Brigade in the Militia of the said State, both which persons are now in England, and ready, if required, to give evidence of the conversations above-mentioned; and he further saith, that he arrived in England from America some time on or about the 2d day of January, 1796, and on or about the 23d day of said month had a personal interview with his Grace the Duke of Portland, one of his Majesty's principal Secretaries of State, respecting the cutting of the canal aforesaid from Lake Champlain to the river St. Laurence, in Lower Canada, which he afterwards, in a correspondence with the said Minister, pointed out as an object likely to be productive of great public advantage, as well to Great Britain as to the State of Vermont, but the deponent being at length informed that his Majesty's government could

could not, by reason of the war, undertake to make any advances of money, he offered, under certain conditions, to cut the said canal at his own expence, and was thereupon informed, that the plan would, during the then approaching recess of parliament, be further considered by his Majesty's ministers; and he further saith, that during his stay in London, where he continued till the 24th day of May, 1796, when he set off for Deal, in order to proceed on board an American ship then lying in the Downs, destined to Havre de Grace, he made enquiries of several persons as to the price of muskets in this country, and the price of them in France, in the course of which enquiries he learnt that he could not be permitted to export them from this country without an order of the King in Council, which was likely to be attended with difficulties, and that he would probably be able to purchase and export them from France with greater advantage and facility, in consequence of which he determined to postpone the final conclusion of the purchase until after he had made a journey to France, which country, and various other parts of Europe, he intended to visit before his return to America; and he further saith, that shortly after his arrival in France, in May, 1796, he found out and discovered that the French government was possessed of an immense quantity of muskets, which had been taken from their enemies, and being considered by them as unfit for the use of their own troops, were likely to be sold cheap,
and

and having, while at Paris, entered into a negociation with the officers of government there, in respect to the purchase of arms, he, at length, made an agreement with the government of the French republic, under a contract with M. Petrel, the minister at war, signed by him and this deponent, to purchase 20,000 muskets, furnished with bayonets, 24 brass cannons, four-pounders, six gun-carriages, and six cannon-waggons, on account of which he, the deponent, paid one-fifth part of the value thereof, amounting to 160,240 livres, and agreed by virtue of the said contract, to pay the remainder of the value of the said goods within the term of seven years from the time of their delivery, with interest at the rate of 5 per cent. per annum, (as by the said contract will appear); and this deponent saith, that the whole of the goods purchased as aforesaid, was not laden on board the said ship by reason of their not being sufficient room to stow them, and that the goods so laden as aforesaid, were to be delivered at New York, the true place of their destination, for the sole account, risk, and benefit of this deponent; and he further saith, that after he had made the contract hereinbefore set forth, to wit, on or about the fifteenth day of July, one thousand seven hundred and ninety-six, he wrote advice thereof to the aforesaid Thomas Chittenden, Esq; the Governor of the State of Vermont, and transmitted to him the draft or copy of an advertisement intended to be published in the public newspapers of that State, with a request that he

he would cause the same to be inserted in all the papers of the said State, giving notice that he, the deponent, had compleated a contract for supplying the Militia of the said State with arms, and desiring that the deficiencies of the muster-rolls might be noticed in the next October returns, in order that he, the deponent, might be made acquainted where to send the said arms after their arrival at Troy, in the State of New York, with a view to their more convenient distribution; and the deponent also sent drafts or copies of the said advertisement to Mr. Samuel Williams, the printer of the public newspaper at Rutland, in the State of Vermont aforesaid, with directions for the publication thereof; and he further saith, that previous to his departure from the State of Vermont, he had several conversations with General Wolfey, who commands the Militia of that part of the State of New York, which borders on the western side of Lake Champlain, respecting the deponent's plan of purchasing arms for the use of the Militia of the State of Vermont; and the said General Wolfey agreed, in case the deponent should purchase more arms than were necessary to supply the deficiencies in the State of Vermont, that he would cause them to be distributed among the Militia of that part of the State of New York which he commanded; and as the Militia of the State of Vermont amounts at this time to a number between twenty and thirty thousand men able to bear arms, and as each Militia man pays for his own musket, the depo-

M

nent

nent is well convinced that he could have disposed to advantage of a much greater number than that by him contracted for as aforesaid, either to them, or among the Militia of the different States, who are generally deficient in that respect; and the deponent well knows that the State of New York has lately made application to his Excellency Rufus King, the Ambassador of the United States, in London, to cause muskets to be purchased for the use of the Militia of said State, and that the State of New Hampshire has likewise employed an agent in London for the like purpose; and he further made oath, that shortly after the capture in question, he was desirous to inspect the originals, or obtain copies of the papers found on board the said ship, in order to lay the same before his Excellency Rufus King, Esq; Ambassador of the United States, with a view to obtain restitution of the arms, by means of a representation to his Majesty's Ministers, but, on applying at Doctors' Commons, was informed that he could not be permitted to inspect said papers, or to have copies of any of them, without first giving his claim in this Court, which he then declined doing, from a firm conviction that he would be able to obtain restitution by a mode less circuitous and expensive, and therefore made his application to the said Rufus King, upon his own statement of the facts, and requested his interference with his Majesty's Ministers; and the said Rufus King having written several letters to Lord Grenville, one of his Majesty's prin-

principal Secretaries of State, the deponent has lately, to wit, about the 17th day of this Instant, February, received the copy of an answer from the said Minister, in which he observes, that it belongs to this Honourable Court to determine upon the sufficiency of this deponent's claim, and that doubtless every consideration of national justice, and of private convenience, requires that the decision should be speedily obtained; and he lastly made oath, that no person or persons, being a subject or subjects of France, of the States General of the United Provinces, or of his Catholic Majesty the King of Spain, or inhabiting within any of the territories of France, of the said States General, or of his said Catholic Majesty, their factors or agents, or any others enemies of the crown of Great Britain had, at the time of the capture and seizure of the said goods, or now have, any right, title, or interest in the same, or in any part thereof; and that the claim * hereto annexed is a true and just claim, and that he shall be able to make due proof and specification thereof.

IRA ALLEN.

Same day sworn before me,

S. P. PARSONS, Surrogate.

Present, ROBERT SLADE, N. P.

* See Page 118, marked A.

OLIVE BRANCH, WILLIAM BRYANT, Master.

IRA ALLEN, Esquire, claimant of the cargo laden on board the ship Olive Branch abovementioned, maketh oath and faith, that he formerly had in his possession an instrument or paper writing, under the seal of the State of Vermont, authenticated by the signatures of the Governor and Secretary of the said State, and purporting to be a request or certificate from the Governor thereof, to him, the deponent, for the purchase of arms for the use of the Militia of the said State, being the order or request from Governor Chittenden, mentioned in several of the affidavits exhibited in this cause, which order or request, (together with a general passport delivered by the deponent into the hands of Davidge Gould, Esq; the Captor) and a certificate, under the seal and signature of the State and Governor aforesaid, were laid before the officers of the French Government, at the time of his making the contract for the arms therein mentioned, in support of the extensive credit he required for the payment of part of the purchase money agreed to be made for the same; and he further faith, that on its being asked of him by the officers aforesaid, to leave the said passport and certificate with them, he object thereto, by reason that the said passport and land certificate might be of use to him during his further travels through Europe, as proofs of his character and responsibility, but consented

sented to give up the order or request from Governor
 Chittenden as conceiving the object thereof to be
 compleated, and to leave authentic copies of the said
 passport and land certificate, with which the said
 ministers or officers of the French Government were
 satisfied, and the said order or request having been
 accordingly left with them, the same now remains in
 their hands at Paris; and he further saith, that the
 paper writing hereto annexed, marked with the letter
 A*, contains a true copy of the land certificate, which
 he declined delivering up as aforesaid, and that the
 original thereof is now in his hands, and ready to be
 produced to this Honourable Court, if thereunto
 required, for the purposes of this cause; and he
 further saith, that the negociations between the French
 minister of war and him, the deponent, respecting the
 purchase of the arms in question, were principally
 verbal, carried on by means of the interpretation of
 General Clark, a French officer, who spoke the
 English language, and that he, the deponent, is not
 in possession of any written documents whatever,
 respecting the purchase of said arms, save and except
 the contracts for the same, and several other papers
 found on board the ship at the time of the capture;
 and he further saith, that Williams, in his History of
 Vermont, states the number of inhabitants in the said
 State in the year 1781, to be 35,000, and the Militia

* See former pamphlet, p. 84.

thereof to be 7,000, agreeably to which numbers a statement was made to Congress, and it further appears by the censors or enumeration of the inhabitants of the said State, in the year one thousand seven hundred and ninety-two, in pursuance of an order of Congress of the preceding year, that the number of said inhabitants then amounted to 85,539, and the number of male persons of the age of sixteen and upwards to 22,435, and the deponent believes that the number of persons in the said State, now able to bear arms, amounts to near 30,000, and by a recent publication by Dr. Graham, entitled, "A descriptive Sketch of the present State of Vermont," the inhabitants of the said State are computed at 120,000 persons, and the Militia thereof at 24,000 men; and he further saith, that by the laws of the United States of America, each militiaman belonging to the said States is bound to find his own musket or firelock, pouch, and other military apparatus, and by the laws of the State of Vermont every regiment is entitled to have one company of artillery, with each a field-piece, and that by the laws of the States aforesaid (which no treaty with any foreign nation forbids) individuals are permitted to buy arms, and convey them into the said States, as will more fully appear by the paper writing * marked with the letter

* See former Pamphlet, p. 88, for the Certificate of his Excellency Rufus King, and the Act of the United States, passed May 8, 1792.

B, hereunto annexed, being a certificate under the hand of his Excellency Rufus King, the present minister from the said States to the Court of London, granted at the request of the deponent, for the information of this Honorable Court, and to which the deponent craves leave to refer himself; and he lastly saith, that during his stay at Paris, he, several times in conversation with Mr. Munro, the Minister of the United States to the French Republic, mentioned his intention to purchase the arms, and asked him if he knew of any law of the said States to prevent it, when he informed the deponent he knew of none, and after the deponent had purchased the said arms, he again, in conversation with the said Mr. Munro, informed him of his having compleated the said purchase, and of his intention to proceed therewith to New York, for the purposes mentioned in the proceedings of this cause.

IRA ALLEN.

On the 27th Day of June, 1797,
the said Ira Allen, Esquire,
was duly sworn to the truth of
this Affidavit, before me,

S. P. PARSON, Surrogate.

Present, PFERROT FENTON, Not. Pub.

Admiralty Prize Court.

The OLIVE BRANCH, Wm. BRYANT, Master.

SIR,

ON the 5th of July last, the Judge of the High Court of Admiralty was pleased to pronounce the further proof of property of the cargo of the above ship brought in by you to be insufficient, and to direct that still further proof should be given by plea and proof as you have not given any allegation or plea in consequence of the above order, and as I am pressed by the agent for the captors to apply to the Court for a final decision of the question of prize, you will be pleased to take notice that, at the Court to be held on Friday next, the 8th instant, I shall, by and with the approbation of counsel, move the Judge to condemn the Cargo of the said ship as lawful prize.

I am, Sir,

Your most obedient humble Servant,

Doctors' Commons, 4th Dec. 1797.

Mr. SLADE.

JAMES HESELTINE.

I hereby certify, that the original of the above copy was not left at my office until the fifth Day of December, 1797. Witness my hand, this third January, 1798.

ROB. SLADE.

OLIVE

OLIVE BRANCH, W^M. BRYANT, Master.

December 8, 1797.

No allegation having been given, Hefeltine prayed the Judge to condemn the cargo.—Present Slade, who brought in allegation. The Judge assigned to hear on admission thereof the bye-day.

In the Court of Admiralty.

Before Sir JAMES MARRIOT.

Tuesday, Dec. 12, 1797.

The OLIVE BRANCH.

Dr. NICHOLL.

SIR—This is an American capture, consisting of American stores, which was taken the 19th of November, 1796, by his Majesty's ship the Audacious; she was brought into Portsmouth, and it is hardly necessary to trouble you, Sir, with the different proceedings in this cause. It appears the claim came on to a hearing, and on the first session of Easter Term (the 13th of June) you was pleased to order further proof, that further proof was immediately brought in; on the 21st of June you pronounced the further proof that had been exhibited, to be insufficient; on the 5th of July the defects of proof having been supplied on the part of the
Claimant,

Claimant, you was then pleased to pronounce that the further proof was insufficient, and directed still further proof, by plea and proof. With respect to the cargo, applications were made from time to time that the property might be taken out on bail being given. On the 5th of Dec. 1797, for the first time, the Captors expressed a wish, by a notice in writing, that this further proof should be brought in, and if not brought in, a motion would be made for condemning the cargo on the Friday; on the 8th of December, the Proctor for General Allen brought in the allegation as desired; that allegation, Sir, now stands on admission, and the question now before the Court is, Whether the present is a sufficient allegation for the purpose of producing further proof, and this allegation must be read to the Court. I shall not trouble you, Sir, with stating it at any length; I shall only state the outlines of it; it consists of nine articles; the first pleads that General Allen is a Citizen of America, that the Militia of Vermont are 25,000 men, that it is the duty of every citizen to provide himself with arms; the second article pleads that General Allen coming over to England, was requested by the Governor to procure arms, in consequence of which he determined to procure them on his own account, that conversations on this head were held with different officers, and among the rest with General Wolfey, who commanded a part of the State of New York, who agreed, that if there should be any new supply of arms, the Militia should

should have it; the third pleads General Allen's coming to England, &c. the fourth pleads ditto; the fifth exhibits in supply of proof the affidavits; the sixth states that in August, 1796, he returned to England, &c. the seventh pleads relative to the vessel in question; the eighth avers that the property belonged to him in substance, as the allegation does, that the arms were actually assigned to America, and no other place, and that they were actually intended for Vermont, and no other place, and for no enemy whatever. Sir, this is the substance of the allegation; we must read it, and then hear what objections the Gentlemen have to make; then we must endeavour to answer those objections, and then we shall hope that the Court will be of opinion that these arms should not be condemned.

The Allegation read by Dr. Arnold.

Admiralty Prize Court.

The OLIVE BRANCH, W^M. BRYANT, Master.

On Friday, the 8th Day of December, 1797.

ON which day Slade, in the name and as the lawful Proctor of Ira Allen, of Colchester, in the County of Chittenden, and State of Vermont, in North America, Esquire, Claimant of the several articles particularly specified in his claim as his true,
lawful,

lawful, and sole property, and by all better and more effectual ways, means, and methods which may be most beneficial for his said party, sayed, alledged, and in law particularly propounded, as follows, to wit:—

First. That Ira Allen, Esquire, the Claimant in this cause, is a native citizen of the United States of America, and a Major General in the service of the Militia of the State of Vermont, and for about twelve years last past, hath always resided, and now doth reside, when at home, at Colchester, in the said State; that the Militia of the said State consists of at least 25,000 men, and it is the duty of each militia man to provide himself with his own arms, and that each regiment of the said Militia is entitled to have one company of artillery, with a field-piece; that the Militia of the said State always have been, and now are, extremely deficient in arms and other military implements and accoutrements, insomuch that a review of the said Militia could not be properly conducted for want of the same; that the subject of providing arms for the said Militia was many times brought under the consideration of the Legislature of the said State of Vermont, and that in or about the year 1794, his Excellency Thomas Chittenden, the then Governor of the said State, made application to Edmund Randolph, Esq; then Secretary of State of the United States aforesaid, for the purchase of arms for the use of the said Militia, and in the
course

course of the same year John Andrew Graham, Aide-de-Camp to the said Governor, was employed by him to purchase arms for the supply of the said Militia at Boston, which he accordingly endeavoured to do, but without effect; and the party proponent doth further alledge and propound, that an agent has lately been employed in London to purchase arms for the use of the Militia of the State of New Hampshire, and that application has been made by his Excellency John Jay, Governor of the State of New York, to his Excellency Rufus King, the Ambassador of the said United States in London, to cause muskets to be purchased in England for the use of the State of New York, which he has accordingly done, and forwarded the same to New York, with the permission of his Majesty's Government; and this was and is true, public, and notorious, and so much Davidge Gould, Esquire, Commander of his Majesty's ship of war Audacious, the captor, and other party in this cause, doth know, or hath heard, and in his conscience believes, and hath confessed to be true; and the party proponent doth alledge and propound every thing in this and the subsequent articles of this allegation contained, jointly and severally.

Second. That the said Ira Allen is possessed of very extensive landed property on the banks of Lake Champlain, and having an intention in the year 1795 of going to Europe, for the purpose, amongst others,

others, of soliciting the ministers of his Majesty the King of Great Britain to engage in the making a navigable canal from Lake Champlain to the river Saint Laurence, was requested by his Excellency the aforesaid Thomas Chittenden, Governor of the said State of Vermont, to procure a supply of arms and other implements of war for the said Militia, and in consequence thereof, and of his own knowledge of the insufficient manner in which the said Militia was armed, he determined to endeavour to purchase such arms and other implements of war on his own account, to be sold and disposed of, among the persons composing the said Militia, and in the months of October, November, and December, 1795, he consulted with several persons in America on the subject of the said purchase, and particularly the said Thomas Chittenden, Esq; John Andrew Graham, his Aid-de-Camp, Jonathan Spafford, Brigadier General in said Militia, and Nathan Burr Graham, Major of Brigade in the said Militia, and that having mentioned such his intention to General Wolfey, commanding the Militia of that part of the State of New York which adjoins to Vermont, the said General Wolfey agreed that if the said Ira Allen should purchase more arms than should be necessary for the supply of the Militia of the said State of Vermont, he would cause the same to be distributed among the Militia under his command; and this was and his true, public, and notorious, and the party proponent doth alledge and propound as before.

Third.

Third. That the said Ira Allen arrived in England on or about the 2d day of January, 1796, and obtained an interview with his Grace the Duke of Portland, one of his Majesty's principal Secretaries of State, on the subject of the canal aforesaid, but finding that he was not likely immediately to obtain the assistance he desired in the same, he made enquiries of several persons in London as to the price of muskets, and was informed that he could not export the same from this country without an order of the King in council, and that the obtaining such order would probably be attended with difficulty, and that he would be likely to purchase the same at a lower price in France; that in or about the month of May, in the said year 1796, he went to France, and having learnt that the French government was in possession of a great quantity of arms, taken from their enemies, and considered by them as unfit for the use of their own armies, and which, in consequence thereof, they were disposed to sell at a moderate price, he proceeded to Paris, and on or about the 11th day of July, 1796, he contracted with the said government by their minister of war for the purchase of, and actually purchased of the same, 20,000 muskets, of foreign manufacture, with their bayonets, 24 brass cannon, four-pounders, six gun-carriages, with the necessary utensils for the service of the said cannon, and six cannon waggons, to be delivered at Ostend; and this was and is true, public, and notorious, and the party proponent doth alledge and propound as before.

Fourth.

Fourth. That on or about the 15th day of the said month of July, 1796, the said Ira Allen wrote a letter to the said Thomas Chittenden, Esq; advising him of his having made the said purchase, and transmitted to him the copy of an advertisement addressed to the officers of the Militia of the said State of Vermont, informing them, that by request of the said Governor, he had made such contracts, and desiring them to be particular in the return of deficiencies in their muster-rolls, in the next October, in order that he, the said Ira Allen, might the better know to what places in particular to send the said arms after their arrival at Troy, in the State of New York, and in his said letter requested that the said Thomas Chittenden would procure the said advertisement to be inserted in the public newspapers of the said State; and the said Ira Allen, at the time, likewise sent a copy of the said advertisement to Samuel Williams, the printer of the public newspaper at Rutland, in the said State, with directions that the same might be also inserted in the said paper; and the party proponent doth further alledge and propound, that an advertisement to the effect aforesaid was inserted in the several public newspapers of the said State, particularly in the Vermont Gazette and the Rutland County newspaper, as well as in the newspapers of other places in the said United States of America; and this was and is true, public, and notorious, and the party proponent doth alledge and propound as before.

Fifth.

Fifth. That in supply of proof of part of the premises mentioned in the next preceding article, and to all other intents and purposes in the law whatsoever, the party proponent prays leave to refer to two certain printed papers marked No. 4 and No. 8, now remaining in the registry of this Court, annexed to an attestation made by the said Ira Allen, Esq; on the 4th day of July, 1797, respecting the cargo of the said ship Olive Branch, and prays that the same may be taken as part and parcel hereof, and as if here read and inserted; and doth alledge and propound the said Exhibit No. 4 to be the Rutland County newspaper, called the Herald, for the 14th of November, 1796, and to contain the advertisement forwarded by the said Ira Allen to the said Samuel Williams, mentioned in the next preceding article; and that the said Exhibit No. 8 is the Vermont Gazette of the 18th of November, 1796, and also contains the said advertisement in regard to the aforesaid arms mentioned in the next preceding article, and that Ira Allen, Esq; by whom the said advertisement is signed, and Ira Allen, party in this cause, was and is the same person, and that the arms mentioned in the said advertisements as having been purchased at the request of his Excellency Thomas Chittenden, and the arms claimed in this cause are the same, and not divers; and this was and is true, public, and notorious, and the party proponent doth alledge and propound as before.

Sixth. That in the month of August, 1796, the said Ira Allen returned to England; in the same month contracted with William Golbourn, of Wardour-street, Soho, in the County of Middlesex, feather-manufacturer, for a large quantity of military feathers, to the value of near 1200*l.* and gave him directions as to the manner in which he wished those intended for his own division, consisting of 5000 privates, besides officers, to be prepared, and in consequence thereof, the said William Golbourn, in the month of October following, shipped three cases, containing 1646 military feathers, on board of the ship *Fame*, destined to New York, together with a great variety of patterns for the inspection of the officers of three other divisions of the said Militia; and the said William Golbourn likewise applied to different dealers in feathers in London to supply him with feathers for completing the same; and this was and is true, public, and notorious, and the party proponent doth alledge and propound as before.

Seventh. That the said Ira Allen applied to Stephen Thorn, of the County of Washington, and State of New York, then in London, and desired him to charter a ship for him, for the purpose of conveying the said arms to New York; that accordingly the said Stephen Thorn, in the month of September, 1796, chartered the said ship *Olive Branch*, William Bryant, Master, then in the port of London, to go from thence to Ostend, to receive the said cargo,
and

and to proceed therewith to New York, in his own name, and afterwards indorsed the said charter-party to the said Ira Allen; and the party proponent doth further alledge and propound, that some time in the latter end of the month of September, 1796, the said Ira Allen went to Ostend, and on or about the 29th day of October following, there shipped on board the American ship Olive Branch, whereof the said William Bryant was master, then lying at anchor in the port of said place, bound for New York, 21 pieces of brass cannon, 3 carriages, with their necessaries, and 401 cases containing 15,000 muskets, or thereabouts, and a like quantity of bayonets, whereof 29 cases had been broken, and their contents stowed in bulk, being the cannon, carriages, muskets, and bayonets, claimed in this cause, which said cannon and other articles were consigned to the said Ira Allen, Esq; or his assigns, and were to have been delivered at New York for his account, risque, and benefit, and were on board the said ship Olive Branch at the time of the capture thereof, by his Majesty's ship of war Audacious, Davidge Gould, Esq; commander; and the party proponent doth further alledge and propound, that the whole of the goods purchased by the said Ira Allen, as pleaded in the third article of this allegation, were not put on board the said ship Olive Branch by reason that there was not sufficient room to stow them therein; and this was and is true, public, and notorious, and the party proponent doth alledge and propound as before.

Eighth. That all and every the cannon, carriages, muskets, and bayonets, particularly mentioned and set forth in the next preceding article of this allegation, at the time they were shipt, as therein pleaded, and at the time they were taken and seized by his Majesty's ship of war Audacious, did belong to him, the said Ira Allen, Esq; a citizen of the United States of America, and have ever since belonged to him, the said Ira Allen, Esq; and do belong to him at this present time, and would have so belonged to him in case the same had not been seized and taken, but had arrived and been unladen at New York aforesaid, the original and true place of their destination, and will belong to him if the same shall be restored, and until they shall be sold or disposed of, for the sole account and benefit of him, the said Ira Allen, Esq; and that the real and true destination of the said ship Olive Branch was to New York, and to no other port or place, and the said arms and other articles were intended for the use of the Militia of Vermont as aforesaid, and for no other use or purpose whatever, and that no person or persons, being a subject or subjects of France, the United Provinces, or King of Spain, or inhabiting within any of the territories of France, the United Provinces, or King of Spain, nor their factors or agents, nor any others, enemies of the crown of Great Britain, have, hath, or had, any right, title, or interest, directly or indirectly, in or to the said goods, or any part thereof, at the said several periods of time, nor will have, until the same shall

shall be sold or disposed of, for the sole account and benefit of the said Ira Allen as aforesaid; and in case the said cannon, carriages, muskets, and bayonets, had been, or shall be lost, or shall be condemned, he, the said Ira Allen, Esq; would have been, and will be, the only loser; and this was and is true, public, and notorious, and the party proponent doth alledge and propound as before.

Ninth. That all and singular the premises were and are true, and so forth.

Signed

{ J. NICHOLL.
 { J. H. ARNOLD.

SIR WM. SCOTT, *on Behalf of the Captors,*
proceeded as follows:

SIR—IN this case, as to the general circumstances, it is not necessary for me to trouble you with a statement of them, because the Court has heard them already. Sir, on the opening of the evidence, and likewise on bringing in the further proofs, and a number of affidavits, which the Claimant was permitted to exhibit, the Court was of opinion, that it still remained in a very doubtful and obscure situation, which required much more satisfactory proof than the papers then before the Court. This was on the 21st of July, and no step was taken, no plea put in, nor any thing done to explain those circumstances to the Court, which had

struck the mind of the Court, as singularly obscure; nothing whatever done, no attempt whatever made, on the part of the Claimant, to discharge that obligation, which the authority of the Court had imposed upon him. Sir, attending to this conduct of the Claimant, the Captors, on the last court day, thought themselves warranted to apply for the condemnation of these goods. It is, I am sure, unnecessary for me to state that rule, long established, and constantly adhered to, that if proof does not come in the time required, the condemnation takes place almost of course; if parties are permitted to lay by, to harass Captors with litigations without end, protracted litigations, one cannot see the end of such a proceeding, and in the present case, one hardly sees an apology, at least, not any sufficient apology for this delay, because it must have been a transaction which passed immediately under the act, which passed immediately under the dominion of the party himself. It is impossible but that all necessary documents must have been in his possession; it is impossible but all necessary facts must have been within his knowledge; it is impossible, in short, that every evidence that could be afforded respecting the transaction, that any evidence that could be producible, might not have been made matter of a plea, and in that form have been subjected to the view of the Court; it was perfectly unnecessary for the party to require time to state to the Court those facts upon which he wished to rest his case; he had no occasion for an

enquiry

enquiry for that purpose. He must have had it in his power to lay his hands on every document that could have been material to his claim, yet there is no one document produced until this allegation is, as it were, reluctantly extorted from him, on the last court day. The manner in which that allegation was at length produced, after pressing, on the part of the crown, to proceed to condemnation, it came in; it came in, at last, *pro forma*, evidently, and for the purpose, evidently, of stopping that act to which the Court would have proceeded. It was not the allegation which the party originally had in contemplation to offer; if he had, there was no reason whatever which should have prevented him from offering it the next court day, and having not so done, it is matter that comes in merely for the purpose of restraining the Court from the exercise of an authority, which would, properly, be a natural one. Sir, our objection is not to any particular passages in the allegation, but to the allegation *in toto*; that it is that allegation which affords the Court no additional light; that it is an allegation which affords the Court nothing which has not been already submitted to the Court, by the affidavits and other documents, and which are, in fact, proved, and which have not given the Court entire satisfaction; if the Court perceives that the general result of an allegation, if proved, will not illustrate that case to its entire conviction, it will not go to further proof. Sir, we had a right to expect, and the Court had a right to expect,

he would have produced every written document, with which the transaction must have been necessarily attended. It is a transaction in its own circumstances highly unnatural, that an American gentleman should, during a war, go to one of the belligerent countries, there to purchase muskets and other instruments of war, and purchase them of persons in a state of disaffection and hostility to his own country; that he should enter into a negotiation with the government of that country; that he should be indulged with the exportation of a cargo of this nature, and upon terms so unnatural as never attended such a cargo before; so unnatural that mere paroll testimony would hardly satisfy the Judge of the Court in support of such a case. It is impossible but there must have been the documents relative to such a contract; it is impossible but General Allen, if he was commissioned by the States of Vermont to make this contract, it is impossible but he must have a commission for that purpose; he must have Governor Chittenden's authority; but to say that such an authority was conveyed in a mere verbal conversation between him and the Governor, without one scrap of paper, that, to be sure, to use the language in which the Court expressed itself on a former hearing, was a thing, in its own nature, hardly credible; that this gentleman, General Allen, should go to France, that he should enter into a negotiation, the most important, and yet that important negotiation not set forth or recorded in any document whatever; that

that a proceeding so momentous as this is, of exporting this large cargo of arms, and by a subject of a State almost in declared hostility and enmity to France, that he should be indulged with a licence to that effect, and that this should be a transaction not appearing in any recorded form, that, I say, is most highly improbable, and was so pronounced by the Court; that he should actually be permitted to purchase these things by the government itself, that he should be permitted to give that strange and eccentric security, if I may so express myself, the mortgage of his lands in America, of which the French Government are to take seizin and possession, if the payment is not regularly made; that, I say, is another of the unnatural features which enter into the composition of this case; that the subjects of this State should be indulged with the purchase and exportation of arms, not only that, but those arms to be paid for by instalments, and in the course of several years; I say, looking at the condition of the French Government, in point of finance, at this time, and looking at the situation of the subjects of America towards France, that is an indulgence which the Court will not suffer to exist without it is clearly proved. Therefore, Sir, you have a clear right to expect that documents for all these purposes would have been stated to the Court; that General Allen would have taken upon himself to shew he had a written authority from Governor Chittenden and the States of Vermont; for though the Governor had

had a power to grant such an authority, *non constat*, that they would be under the necessity of proving all the papers which passed between him and the French Government, and that they should be produced, for undoubtedly these must have been in his possession, and that the whole train of the negociation should be unfolded to the Court, in the clearest and most explicit manner. Now, Sir, with respect to this allegation. Does it answer these requests in any manner? Is not this allegation grossly defective? If we look at the facts on the papers, we shall see they have taken those sorts of facts that now appear in the papers, and put them into the form of an allegation; they have only put them into another form, into the form of an allegation; they have taken their cherries out of the basket, and merely put them on a stick. Sir, you have already pronounced them to be entirely defective. There is not one original document now offered to the Court, but these facts are merely pleaded, and the same witnesses, it is to be presumed, are to be produced, but unsupported by any one document whatever.

Sir, looking back to the grounds of your former judgment in this cause, we must submit that the mysterious manner in which this allegation has proceeded, it appears to be introduced as a sort of desperate resource, for the purpose of preventing a condemnation, that condemnation which must otherwise have taken place; that no new facts are offered; and further,

ther, that it is not that case to which evidence can be adduced, giving you, by cross-examination, that conviction which you are entitled to, before you can consent to the restitution of this cargo.

DR. LAWRENCE.

SIR—The present allegation arises in a cause which has already appeared before the Court, and, to be sure, we are not now on the principle merits of the cause; we are now debating whether the allegation offered to the Court by the Claimant, can have any effect in law whatever, supposing every single syllable of that allegation to be proved, or that it could be proved, and I apprehend no more could arise from it if it was proved, and if every word of it was in evidence, for if it was, it could not answer the purpose for which it is produced. Sir, this cause has been several times before you, and came before you in judgement, when immediately the Court ordered further proof, when they had heard the first facts. The Claimant then came forward with the affidavits and documents with great triumph, but still further proof was ordered; then they brought another affidavit and a number of exhibits; these again came before the Court, and the transaction appeared to the Court so involved in intricacies and numberless ambiguities, and so suspicious from their own stating, that the Court

Court ultimately ordered that there should be further proof in pleading. In that stage the cause is at present. I do not recollect that any one single thing was objected to the competency of that evidence; I do not recollect that it was said that every affidavit should not be read, or every syllable or circumstance, on which to ground the decision of the Court, not that the Court had nothing before it on which it could resolve. As to the order for further proof, if it is the same order which the Court has before it, why I apprehend, if this was to undergo any further proof, the Court would have heard of that. It is unnecessary for me to dwell minutely upon every point, but I recollect that all the points which have been mentioned, especially all the steps of the negotiation, were those which the Court dwelt particularly and essentially upon. It was impossible to see clearly into this case, and not perceive that there was a great deal of writing passed, and must have been a great deal of writing passed on an agreement of this sort, which, on the face of it, was subject to all the observations on the circumstances which the King's Advocate has mentioned. Now, Sir, how does it stand on every other point stated in this allegation? the three first articles are almost word for word, and shall the same things which were rejected in that form, again come before the Court? the fourth and fifth is in these exhibits annexed to the affidavit; they state nothing more than only as to having sent an account of this to
the

the States of Vermont, and desiring an advertisement, which was inserted in the newspaper. The Court recollects there was a copy of these advertisements before them, and there were affidavits shewing that fact; nothing, therefore, can arise from that part of the allegation. The sixth article contains an account which the Court, I dare say, recollects, as to a quantity of feathers. Sir, there is nothing at all in that account of the feathers, which is stated in this affidavit, that is discredited by us, nor discredited or disbelieved by the Court, that I remember. The eighth article contains what follows of the history of the charter-party, of the history of this transaction relative to the charter-party, and nothing but what is to be found in the affidavits which were produced before the Court. As for the charter-party mentioned in the affidavit, we have that already from General Allen; I do not mean in the very words, but that there is not one single thing that goes to any one point before the Court. I should be happy if the Gentlemen on the other side will look at this evidence and this allegation, and in any one instance say that it will make the matters clear in the least degree before the Court. Now, Sir, if this has been the case; if six months have been given, when the intercourse between a neutral State and France might have been obtained by that time, when documents of this sort might have been obtained and produced to the Court, no one step taken to produce any document from America, nor
any

any expectation from thence, when that condemnation was prayed for by the other side which they had a right to; then at last forth they come with an allegation to supply the deficiency, when there was not a single moment to be lost, then they put in these facts which were in evidence before; they put them in, in the shape of an allegation. Sir, if that was done at the first time of putting in farther proof it might be admissible, but now we hope that the Court will condemn this emblem of French peace, this Olive Branch.

Dr. NICHOLL.

SIR,—On the part of the Claimant I am to support the admissibility of the present Allegation, and to support it against the several objections that have been made against it, both by the King's Advocate and the learned Doctor who spoke last. Sir, The King's Advocate thought it necessary to call your attention to the proceedings that have taken place in this Cause. Sir, I may say, that the proceedings which have taken place on the part of the Captors, are as extraordinary, (together with the objections of their counsel) as any ever yet laid before the Court. Sir, the vessel in question was taken and brought in in December last, a claim was heard, and the cause was retained for further proof. Sir, there were a variety of affidavits brought in, and you thought those affidavits not sufficient, and then the cause stood for further proof; this was in July last.

last. Sir, the nature of this transaction must recur to the recollection of the Court so fully, and the different affidavits from which the Court sees that the cause originated in America, that it was necessary for us to shew it was carried on in America, to shew it was carried on in France; those affidavits are now before the Court; under these circumstances it must appear that the allegations were not brought in, and that certain exhibits would be proper and necessary; from whence were those exhibits to be procured? Part from America, part from France, between which country and America there is, at this time, such a difference subsisting in point of hostility or amity, that no American could produce any such exhibits from France; but the Captors, without any application to the proctors for the Claimant, without any sort of notice whatever, suffer it to go on; without any sort of notice expressive of any impatience, without any step whatever being taken, then, on the 5th of December, they write a note that the cause having remained for further proof from the 15th of July, they were pressed by the agent for the Captors, and should move for judgment, in two days after. Sir, this I believe is not an usual mode of proceeding, it is usual that you should pray a time should be assigned for plea and proof, if not, it is usual to assign further time; however, here is a notice at once given, and from the mode of the Captor's proceeding in earlier stages of the business, and knowing the force with which the matter would be urged by the gentlemen on the other side, it was necessary

sary to answer and shew whether that allegation does contain admissible matter for bringing in further proof. Sir, in other cases the Court has allowed much further time, in the case *Ea fardelor*, and two other cases, in a recent case before the Lords, where the Captor undertook to plead and prove certain facts, a certain time was allowed to them to bring in their allegation; they were assigned to deliver the copy of that in a certain time, they did not comply with that; they applied for an extension of time, which was allowed, but here at once they give us notice, that unless our allegation is brought in in two days, the condemnation will take place. Sir, I mention this, in order to shew the extraordinary mode of their proceeding, but, however, this allegation does contain every possible averment, every possible proof which the Court can in any degree require. Sir, my learned friend says, that further proof must consist in the introduction of further facts, new facts; now I profess I always thought it was in the introduction of further evidence, you aver that it is the property of a neutral, and that you are entitled to the restitution of it; and the history of this transaction is given originally by General Allen, in his affidavit, and is contained in the other affidavits; the Court thought these facts should be established by more affidavits, not that they were not established; then, says the Court, if I am not convinced of this being a mere probable transaction, the mere proofs by affidavit will not satisfy me, I will have proofs by witnesses, and the transaction sifted to the very bottom.

tem. Now Sir, what is the objection to the present allegation, the gentlemen have brought their former objections hashed up again, and we bring them in answer the improbability of vouchers, which would be incontestible evidence being to be obtained. Sir, upon the admission of this allegation, what is the matter to be considered? Why all the facts must be taken as true, every fact be considered as perfectly true. Now, Sir, what does General Allen aver in this? I will not carry you through all the different articles of this allegation, but he does aver that he was employed by the Governor of Vermont, to purchase these arms, that by the laws of America each Militia is to find its own artillery and arms, that he had frequent conversations with the officers in America on this subject, that frequent pains were taken to procure them, that Governor Jay took those means, that this gentleman came to Europe with authority from Governor Chittenden, on collateral business, that he did actually purchase those arms in France, ship them to America, and intended to go there to wait their arrival, that he notified their coming to the Governor of the place, that these arms were actually destined to that place, and were intended for the use of the Militia, and no other use whatever. Why, Sir, if he proves these facts, can there be a possibility of a doubt that this gentleman will be entitled to a restitution of them? if these things are true, how shall they not be restored to him? Now, Sir, these are the facts contained in the

allegation, and these facts must be taken as true, for the purpose of debating its admissibility. What say the gentlemen, not that if these facts are proved he will not be entitled to restitution, but that we shall not be able to prove them; that yet remains to be proved. Sir, if you consider first with respect to that document which has been mentioned, you will please to consider whether it has been in our power to produce it hitherto, and whether we may not produce it yet under this allegation, or in some other manner, in some stage of the cause: It is stated, that this document was in the possession of the French Governor. Now, Sir, General Allen could not have produced it, it was highly improbable, from the state of the two countries, that the French Government would have given it up, but if he can produce a copy of it from the Governor in Vermont, he may annex his seal to it, and produce it in further proof at any stage of the cause, and therefore I take it for granted that document will be produced; I take it for granted that document may be produced, and undoubtedly will be laid before the Court in the further progress of this cause. Sir, what are the other documents which the gentlemen call for? why the whole correspondence between General Allen and the persons concerned. Sir, no Court calls for impossible evidence, but for the proof of the nature of the cause, and if it is proof of persons satisfied with the transaction, persons before the Examiner of the Court, or under a foreign requisition, with the opportunity to the ad-

verse

verse party of cross-examining them, that is the best evidence that can be procured; or if peace should be made, the original document may be brought in, therefore the admission of the present allegation will not at all preclude the party from producing the evidence which he wishes to produce, the Court have a right to receive it, and if this transaction is improbable, still this allegation will be the occasion of introducing to the Court the best evidence which the nature of the case will admit of, by witnesses who are submitted to the cross-examination of the adverse party. Sir, these are the grounds of their objections, and there is nothing to any other facts which I submit, forms any objection whatever; the former affidavits I contend contain a full history of the transaction, and the only ground upon which the Court could pronounce the proof to be insufficient, and that in a case of that description where the proof was not satisfactory, it must be the desire of the Court to obtain all possible information; therefore here is an opportunity offered to the adverse party, whereby they may obtain it. Sir, on these grounds I submit that the present allegation contains such a recital of facts, which, if proved, must shew that this was a transaction entirely innocent, that it was a transaction in which this country, as a belligerent power, is not affected, that this cargo was destined for America, that it was intended for the use of the State of Vermont, and for no other use; and that if these facts are established, which they may be under this allegation,

gation, we shall be intitled to the restitution of this property, and therefore I humbly submit to the Court that this allegation is proper and sufficient, and ought not be rejected.

Dr. ARNOLD.

SIR,—It is my duty likewise to offer a few observations on this allegation; this allegation was offered to the Court on sudden notice, but when I say so, undoubtedly I do not forget that the order for further proof by plea and proof was made on the 4th of July, this circumstance has been called to the attention of the Court, shewing that there has been a degree of delay, on the part of the claimant; this is an objection, however, which the very circumstances of the case, when duly considered, will, as I conceive, entirely obviate: The transaction was carried on in foreign countries, it began and originated in a friendly country, it was compleated in a hostile country, it began in America, and was compleated in France. Sir, it was prudent for General Allen to consider and to learn what evidence, and what witnesses, and what documents it might be in his power to produce, in order to substantiate and produce those facts before the Court, because otherwise an objection might be raised on the part of the Captors; that here were allegations produced in the plea of the parties not substantiated by evidence, by witnesses produced, or by documents exhibited before the

the court: Now the very distance of one of those countries, the interior part of America, would sufficiently account for much longer delay than has occurred in the present case, and that when the party had sent over for documents, a long delay occurred, and great difficulty in procuring those documents, he had written several times, and therefore he apprehended his letters must have miscarried, it was so long before the documents were sent over to him: The situation of another country is a more sufficient plea for the same delay, it is well known that there have been disputes, and disputes which have arisen to a very considerable height, between France and America, which would make it absolutely impossible for any citizen of America to procure any evidence, either oral or instrumental, from France. Sir, it was more necessary for the party to consider this point, to see what evidence he might be able to produce, because many of the objections raised on a former occasion and repeated, rested on the want of certain documents, necessary as they say, in order to prove the circumstances now before the Court: The circumstance of the distance of the countries are sufficient to shew that there are no laches on the part of the Claimant, that there was no delay in bringing forward this proof. Sir, the case proceeded under these circumstances, without any notice on the part of the Captor; that he considered the delay as unreasonable, till all at once, at the end of the present term, the proctor was served with a notice, that in three

days a motion would be made to the Court to proceed at once to the final condemnation of this property, an application which is very extraordinary, if not totally unprecedented; the usual step taken in cases of this kind is to apply to the Court, not for immediate condemnation of the property, but that a certain time may be assigned for the proctor on the other side for bringing in the allegation which he is to exhibit, and in most cases, if that application is not complied with, another assignation is appointed to bring it in on some future day; these are the steps usually taken in such cases, first to appoint a day, and then to make that day a precise one, by the Proctor. Now in this case, no such application was made to the Court, no such assignation was made by the Proctor, no fixed day to us, but the notice was, that within three days from the time of receiving that notice, the Court would be moved to the immediate condemnation of the property, and which I call particularly to the observation of the Court, to shew that the conduct of the party on the other side, is of an extraordinary, singular, and particular nature. Sir, in consequence of this notice the party has brought in the allegation now before the Court, pleading the several facts in such a manner as it was thought advisable for us to plead them under these circumstances, and the objection which the gentlemen on the other side have taken to the admission of this plea, is not to any of the particular facts pleaded in this allegation, but in toto against the admission of any

any part of it; it was impossible, I conceive, that the gentlemen could object to the relevancy of any of the facts in this allegation; I will not go at length into the detail of the articles in this allegation, it is sufficient to say to the Court, that it pleads in general that the Claimant is a neutral subject, that he actually purchased the property in question, and that it became really and truly his property, that it was going to a neutral port, and that though it consisted of warlike instruments, yet it was going for an innocent purpose. Now, Sir, I submit to you, it would have been impossible for the gentlemen to have said that any of these allegations were irrelevant to the case, these are the very foundation of a sentence of restitution; but the objections of the gentlemen are, that the allegation offered to the Court tells nearly the same story that has been told before, that it pleads only the same facts, and tends to throw no light on the subject. Now this objection consists partly of an assertion of fact which must necessarily occur in every case of this kind, and therefore can form no objection in any case, and is partly a hypothesis and supposition raised by the gentlemen themselves, who have no right to raise, in this stage of the cause, any hypothesis which would be directly contrary to the true nature and circumstances of this cause; when they say this allegation tells the same story that has been told before, they recite to you a fact which necessarily occurs in every case of the kind, for if the claim of the party who appears be-

fore you be true, if it be well founded, the story which he has to make out at last must be exactly the same story which he told in the first instance; the facts which he is to prove at last, are the facts which he asserted in the first instance; that he is a neutral, that the property was his, and that he was carrying it to a neutral port; there is no variation in the story, for if there was, that allegation would turn out to be false, and would condemn him; the story therefore which he tells when he comes at last on an assignment of the Court, that he should make proof of his property by clear proof, must be the same story, but put in a different form, and exhibited before the Court in a more formal manner, but it must be the same story as before; but when the gentlemen say that this allegation tends to throw no additional light on the subject, they proceed on an hypothesis, the contrary of which the Court always supposes in considering the admissibility of an allegation; they proceed there on an hypothesis that the allegation will not be proved, but the Court always proceeds on the supposition of the several facts being proved, and then proceeds to consider whether the plea will answer the further purpose for which it is brought: But the gentlemen say the party is called upon to introduce new facts before the Court, this I conceive to be an assertion totally unfounded, the party bringing forward his facts at first, he endeavours to support them by his primary proof, and if that is not sufficient, then by further proof. Why, Sir, the very
term

term conveys the meaning, it most undoubtedly is not fresh evidence, but new proof, further proof of the facts already ascertained, for new and more satisfactory evidence to be introduced with respect to those facts. In this allegation, Sir, we have pleaded every fact necessary to support the claims of the party, every fact which is relied on and taken before the Court as the foundation of the claim of restitution. We are taking upon ourselves to produce full and sufficient, and satisfactory evidence of every one of those facts; but the gentlemen say, that after all we shall give the Court no fresh light on the subject, that they suppose we shall produce the same witnesses on this allegation which have been already produced on the former. Sir, I beg leave to insist that they have no right to make this supposition, but even if that supposition was true, still no such inference would follow from it, as they endeavour to draw, for if the same witnesses were produced, and their evidence was to be taken in the former manner in which it would be taken by an Examiner of the Court, and subject to cross-examination, that would be evidence of much greater weight than on *ex parte* affidavits; but it is a supposition in itself totally unfounded, it is competent to the party to bring forward many other witnesses, and it is not to be supposed that such steps will not be taken, that satisfactory evidence will not be produced at every one of those examinations, to every one of the facts necessary to be proved. Sir, the gentlemen on the other side have again asserted, that

that it was necessary to prove the several steps of this transaction by written documents; they have asserted that it was necessary to prove the authority from Governor Chittenden, or the State of Vermont, first to purchase these arms, and afterwards to prove the actual purchase of these arms from the French Government. Sir, we have not pleaded any such document in this allegation, but we have pleaded facts, on the examination, and full and satisfactory evidence may be given of the one and the other. A witness, who is produced to speak as to the authority of the Governor, or the State of Vermont, to General Allen to purchase these arms, may bring forward a written document, by which such authority or request was given or made, and annex it to his examination; it may be sent over under the seal of the Government, and exhibited at any time or period.

If an original document cannot be procured, this Court, and no Court of Justice, calls on a party to produce impossibilities; it may be proved that though there was such an original document, it is lodged where it cannot be procured, and there may be witnesses who have seen it, and the Court will accept the best evidence that can be procured; those witnesses who have seen it, may speak to its contents, and there may be in a variety of different ways; full and satisfactory evidence given to the Court, with respect to the existence of such an instrument, if it be necessary, in order to prove that fact, which he
has

has directly and positively alledged; and the same kind of evidence may be produced with respect to the purchase of the arms, the fact is here positively and directly asserted on the one hand, that such a requisition was made, and that in consequence thereof the purchase was made, and of this there is full and satisfactory evidence, and by so doing, it is left to him to prove such document, if thought necessary. Sir, the conduct and proceeding of the Captors has been extraordinary; much longer time than has elapsed in this cause has been afforded usually to transactions of this kind, where the Claimants lived in foreign countries, two or three of which cases have been stated by the Gentleman who went before me, in which much longer time was granted by the party, where the Claimants lived in foreign countries, one, I think, in Switzerland, and in the allegation which we now offer to the Court, we have pleaded every one of those facts in which the Court did proceed and can proceed in cases of restitution. Sir, these are the facts which the party has directly pleaded, the very facts on which every sentence of restitution stands, and these facts the party undertakes to prove by full, and clear, and satisfactory and sufficient evidence, and therefore I conceive it is impossible for the Court to say that here is not sufficient grounds for the admissibility of the allegation now produced, in order to found a claim of restitution, unless the Court declares that no proof whatever shall be sufficient, but that the property in all events must be condemned.

SIR

SIR JAMES MARRIOT.

THIS is a case which is totally different from any case which has come before the Court, I mean any neutral case, for it is a case in which the party has claimed property of his own, and in which the enemy has no direct or indirect interest. I say it is a case totally different from any case of a neutral that has come before this Court; it is a cause of arms; it is a great question, and a cause of arms, with muskets and flints, and bayonets, and cartridge-boxes, and scabbards and swords*, and many other things, 21 pieces of cannon, field-pieces for land service, and for the service of troops in the field, 21 pieces of brass cannon, and these have been taken at a time when it appeared, from the correspondence produced before the Court, and found in the ship, that the French meditated an invasion on this country, and on the kingdom of Ireland, and had brought down troops from the interior parts of France, so as to line the whole coast. It was taken, indeed, at a little distance, no great distance from Ireland, with this man, who calls himself General Allen, in the American service, and who is a General, I dare say, who is a

* The Reader is requested to compare the Judge's statement of the cargo with the Claim, page 74, and Contract, page 27, in the preceding pamphlet.

General

General in America; he is the purchaser of these arms. I did lay it down as my poor opinion, in many cases, with regard to neutrals, that they should go to the ports of the enemy; that they should buy any thing that was to be sold there at the prices at which they were to be sold, and on which they dealt with other nations, that they should go there and buy any thing that was regularly condemned, as the produce of the enemy's country; but I have also said, it must be a *bona fide* purchase of a purchasable thing, out and out. Now, what is the case before me? What appears in evidence brought before me, as to the cargo of this ship? Why, they are arms, they are not the produce of France, but they are the arms of a country, whose minister, at that very time, was guilty, I may say, of treason to America, in endeavouring, at that time, to produce what they have produced all over Europe. If, therefore, under the circumstances of this case, Mr. Allen, however, he may be a great man, under the circumstances of this case, in whatever light he may be considered, as a man of property, for so he asserts himself to be, in the colony of Vermont, he has entered into a trade, which, by the law of nations, cannot be permitted. Let us see then, Gentlemen, for a moment; suppose he has proved this, considering the facts to be true, that he could sustain this purchase by any matter to be introduced into the cause, it cannot be admitted by any law political. Let us see then, whether, in the first place, we are
right,

right, on this day, in examining this plea, given in so long ago as full five months; I think we are now in the sixth month. The Court was not satisfied with this intelligence, for the Court always sets its face against further plea and proof, because it is a round about way of proceeding. The Court, not satisfied with these proofs, did, agreeable to the strictness and directions of the Act of Parliament, the Court ordered further plea and proof. For five months Mr. Allen, General Allen, General Slade, General Nicholl, General Arnold, made no motion whatever, and from the 5th of July no one step whatever is taken. When the Court made that decree, and I can very well charge my memory, (poor as that memory is) I did go, and I think I went a great length in favour of General Allen, to say it would be necessary for the Court to have every circumstance before them. I asked him, as a military man, whether he would advance, or whether he would fall back, whether he would go to the right hand, or whether he would go to the left, and I left him to general for himself; he has generalled, and a plea now is brought in before me, and I flung it out particularly to him, (tender as I am of turning Counsel for any party, for a Claimant is to be taken on that side.) If the scale is equal, a plea shall be thrown in to turn the scale. If he is to justify himself in the eye of his country, if he is to justify himself in the eye of the party before whom he is brought, I flung out to him that it was
 necessary

necessary that he should shew the whole of the negotiation between him and the French Directory; and I am told in the affidavit that it all passed by parole, and by the interference of another person. Were no minutes made? Was nothing done in writing? It is impossible, and I know not what passed as to the substance of that negotiation, but from what he has thought fit to state. As to the affidavits, there is a good deal of pretty round swearing, and I am afraid Mr. Allen's conscience was a little surprized when he made that affidavit, and it is but this day, an hour ago, that they have clapped in the words "directly or indirectly*," and for some reason or other, these words have been left out of the plea, that none of the enemies of this country had any interest in these arms, indirectly. Had the French Directory no interest? It appears that they have a most indirect interest; they have an interest in three parts out of four; they are not paid, at this hour, for three parts in four of these arms and ammunition, therefore the French Government are strongly interested; insomuch so, that the rest of the money is to be paid by instalments; he is to have a credit for seven years, and he mortgages his own

* No alteration has ever been made in any affidavit; but through hurry in making out the allegations of plea and proof, General Allen's Counsel saw an omission, and added in one article, the words "directly or indirectly," the morning of the 12th, before the cause was argued in Court.

estate, that estate which he asserts himself to have; as to that I do not know, it is not my business to deny it, nor is it my business to admit it; this, I know—I know a man that comes from America, and who describes himself with an estate, the map of which would cover this table, and yet I do not believe that he has a single acre there; I do not believe that he has a shilling of property. I do not say that of Mr. Allen; I only say that it may be a strong circumstance, I do not know it is so. Now there is a singular circumstance as to the Seal of Vermont*; it strikes my idea, and shews the character of the people of Vermont; there is in that Seal annexed to one of the affidavits, there are the other colonies represented by a number of small trees, and there is the colony of Vermont like a great tree in the middle, and Mr. Allen, I suppose, is to be the Cæsar, the Buonaparte of America, but that I do not know; and I will do nothing in this case but stick close to the point before me. You

* The Seal of Vermont was established in 1778, by the Governor and Council. Amongst other things represented on the Seal, are the range of green mountains through the middle of said State, with a large tree on the top of said mountain, and thirteen branches and a small branch in the top. The thirteen branches are emblematical of the Thirteen United States protecting said branch on the top, representing the infant State of Vermont, not then in union.

The Seal of Vermont is not annexed to any affidavit, but to General Allen's passport, under the signatures of Governor Chittenden, and Trueman Squier, Secretary.

see one of these allegations is, that an application has been made to the Secretary of State here, for a licence to take any arms out of the country. You find the Governor of one of the provinces applied, through Mr. Rufus King, to the Secretary of State. It does not appear otherwise, than that Mr. Jay and this Mr. Chittenden are acting an independent part. I do not understand but the States of America are as much one and indivisible as the States—I do not know what to call them—as that of France is, and I do say that neither Mr. Jay nor Mr. Chittenden could dare, properly, to authorize Mr. Allen, or any body, to purchase such an immense quantity of stores, more than were wanted by the particular people, more than were wanted by the enemies against whom they were to fight. I say they have no authority to do this, without the order of the Secretary of the States; neither over a bottle, as Mr. Chittenden did, when he first started the scheme, and therefore I have given Mr. Allen as fair a field to march over as man can have, and yet here is no allowance of the States of America. Rufus King says, he knows nothing of any law forbidding American citizens to purchase arms; so any body may say; he knows nothing of any law, he is no lawyer. I am sure, under such circumstances, the seizure was fully justified by the Captain of the man of war the Audacious, and he would not have done his duty if he had not stopped this ship. Why I know in Ireland that arms were expected from France.

P

Why

Why these are murderous arms; they are arms for whole armies; 40,000 stand of arms, and we have had the good luck of seizing 15,000. Well, I have given him opportunity of stating what fresh facts he had, and bringing proofs sufficient, and nothing is done by the Proctor on the part of Mr. Allen; he lays still for five months, and the other side lays still; then they say, come forward, Sir, with your battalion; you fire first. Now five months pass, and, in the mean time, still appealing from my decree, and trying the opinion of another Court, whether the appeal did not lay, and whether my order for further plea and proof was not giving him that opportunity, and thus, from their great wisdom and attention, they took other steps, from their great desire to do every thing that they could for him, and now a notice has been given by the Captor, or by the Proctor for the Captor, to the Claimant, to bring in the pleadings, and his Proctor, on that day, when it was before me, said he desired more time. Well, take such reasonable time—you have had five months, and you have got into the sixth, but it must be in four or five days; they are allowed; but now, without waiting for these four or five days, he pulls this allegation, ready cut and dried, out of his bosom; there he has it, ready cut and dried—ready cut and dried—and when I came to look it over, which I have, with great attention, I cannot find a single matter of fact out of which branches any other fact, or which, if proved,

proved, would weigh a hair in favour of restitution. I cannot restore it; and it does follow, that in all these cases where a party has gone into a vast deal of proof, into a vast deal of assertion, and a great many affidavits; where he has gone into all sorts of small talk, for the article of the feather merchant does not weigh a feather; if it was shirts, or shoes, or stockings, it is nothing at all to the purpose: but here is the plea and its contents; there is nothing more than what has already been related, and so far as good round swearing will do, that has been sworn to and proved. Then when the Court has given sufficient time for fresh facts, I say, if the party fails in that proof, I must necessarily reject the allegation. Having rejected the allegation, what follows? Why a definitive sentence of condemnation. The party on one side desires I will go on; the Claimant comes with his plea, which contains nothing but what has already been pleaded. Then, I say, this plea must be rejected; the consequence must be an appeal to a superior power, who certainly have their communications with the American States, who have communications of every kind relative to this business, relative to the intentions of Mr. Allen, and every body concerned with him, and also relative to the French Directory, and by that superior Court he must be justified; he has appealed to Cæsar, to Cæsar he shall go—I reject the allegation.

Dr. Nicholl.—Sir, I beg leave to observe, that the Court has said something, by way of intimation, as to further time. *Sir James.*—I did not say any such thing; you desired further time. I reject your allegation, Sir; I have nothing further to say to you; you have led this gentleman round about; I think, if I had been his Counsel, I would have managed his business better.

Mr. Slade.—Sir, I do now ask further time.

Sir James.—Aye, now the cause is determined; but I will not give you further time. Have not you had 5 months, 6 months?

Mr. Slade.—Sir, with all due deference, I do protest against this, and do appeal.

DECEMBER 29, 1797.

*In the Cause of the OLIVE BRANCH, in the Prize
Court of Admiralty.*

A true Copy, examined by my short-hand notes,
E. HODGSON, ELIM-PLACE, FETTER-LANE,
short-hand writer to the Old Bailey for eleven years,
and examined by the notes of Mr. THOMAS NEW-
SOM MENDHAM, who also wrote down the above.

E. HODGSON.

London.

Bye Day after Michaelmas Term, 12th Dec. 1797.

SLADE prayed the allegation to be admitted. Hefeltine prayed the said allegation to be rejected, and the cargo to be condemned; the Judge having heard the said allegation read, and Advocates and Proctors on both sides thereon rejected the said allegation, and by interlocutory decree pronounced the cargo of muskets, bayonets, and field-pieces, to have belonged, at the time of the capture and seizure thereof, to enemies of the crown of Great Britain, and as such, or otherwise, subject and liable to confiscation, and condemned the same as good and lawful prize, taken by his Majesty's ship Audacious, Davidge Gould, Esq; Commander. Slade, with all due reverence, protested of a grievance, and of appealing; the Judge, at the petition of Hefeltine, directed the sentence not to be suspended, on bail being given to answer the appeal; commission of appraisement—Hefeltine.

This agrees with the original minutes now remaining in the Registry of the High Court of Admiralty of England, the same having been collated therewith, in Doctors' Commons, London, this third day of January, 1798.

By me, ROB. SLADE,

Proctor for the Claimant.

London, June 17, 1797.

SIR,

IN consequence of recent statements, have thought proper to give you the relative circumstances of Vermont. It is a part of that district called and known by the name of New England.

In 1764, by a decree of the King and Privy Council, the jurisdiction was changed from the province of New Hampshire to the colony of New York. Previous to the change of jurisdiction, in pursuance of royal authority, the Governor of New Hampshire had granted and issued charters of one hundred and forty townships, of the contents of six square miles each. These grants were principally to the people of New England. Soon after said change of jurisdiction, the respective Governors of New York proceeded to re-grant said lands to certain favourites in New York. Writs of ejectment were served on the people inhabiting the lands granted by New Hampshire. Charters, &c. under the great seal of New Hampshire, were before the supreme Court of New York, refused being read in evidence of the title of said lands, judgments were rendered on said writs of ejectments, and writs of possession issued. But the people, by force, defended their possessions and themselves, and a spirited controversy ensued, which was not settled till 1790, when, by Commissioners from the States of New York and Vermont, all disputes respecting lands and boundaries were settled; all titles to lands within the State

of

of Vermont, that were derived from the Government of New York, were set aside, made null and void by said Commissioners. The Government of Vermont paid 30,000 dollars to the Government of New York, as compensation for said lands. These proceedings were ratified by the Legislature of said States, which was made the basis of Vermont's admission into the federal Government. These procedures have cured all suits on the titles to lands within Vermont, under New York, both in the State and federal Courts, to more than five million of acres of lands, and all disputes respecting them. Matters are settled, and the people of Vermont are as firmly and as cordially settled, under the federal Government of the United States, as any State in the Union. The inhabitants almost unanimously emigrated from the New England States, or born in Vermont, and happily agree amongst themselves in matters of Government. Vermont is considered the fifth New England State; the politics, customs, manners, and habits of the people, being similar to that of their brethren in the States of Connecticut, Massachusetts, Rhode Island, and New Hampshire.

I have the honour to remain,

Your most obedient,

Humble servant,

IRA ALLEN.

Sir William Scott,

London, September 30, 1797.

GENTLEMEN,

I presume that you have heard much of my detention in this place; the evidence, &c. I herewith exhibit, will set that matter in its true light, and enable you to bring my cause before the Government of the United States, in such way and manner as may, in your opinions, be most consistent for the honour and interest of the United States, whose flag and officers are insulted, and a recent treaty violated, by the seizure and long detention of American property, which is extremely injurious to me, and the Militia of Vermont; as I acted under the authority of the Governor of Vermont for the Militia thereof, have applied to the Legislature, for their interference with the Government of the United States, which may be a support to your application. It is a strong cause that requires the interference of the United States in the most pointed manner, through their Minister, who has exerted himself in my behalf, both before and after receiving instruction from the Government of the United States, but our united efforts are not sufficient, either to liberate my property, or to obtain it on bail. But in the face of the evidence you have before you, the Judge of the Court of Admiralty has ordered the cause to plea and proof, which is extremely expensive, and may be three years before decided; in this stage of a suit, the laws of Great Britain are peremptory, that the Claimant is entitled to

to his property on bail; it is also the Law of Nations, and the custom of Courts of Admiralty, in every part of Europe; but this privilege has been hitherto denied me, which is not only a violation of laws, and ancient customs, but very injurious to me, for the bail would be equivalent to the property for the security of the Captors, in case of condemnation, therefore the Captors would have no right to complain. By the delivery of the property on bail, the Claimant would have the use thereof; besides he would have it in his power to justify his conduct and character, by carrying the arms to the port of their original destination, and distributing them to the Militia of the United States, when there could no longer remain a question as to their destination or ownership, from which alone the Captors can hope for success.

I have further to remark, that the Judge of the Court of Admiralty has, in open Court, insulted every officer and citizen of Vermont, by declaring Vermont to be a young sucking State; that the people were a banditti, transported for crimes, from France and England, not well settled in government; that these arms might be intended against Mr. Washington; that I was like Romulus and Remus, who sucked the wolf, full of fight and revolution*, and many other similar reflections, unbefitting

* That he knew I was a Military Man by my step on the floor. That my name (*Ira*) denoted rage, revenge, and madness.

coming the Judge of the High Court of Admiralty of Great Britain.

If the object was to provoke me to gain advantage, it miscarried, for I only smiled the Judge in the face. When asked respecting these matters by the officers of said Court, I observed, that I thought the character of Great Britain, and her Judge, was more in danger than the character of Vermont and myself.

From what I have experienced in the course of this cause, and seen of others in said Court, I think it time for the United States to take measures to have their treaties respected; silence gives consent to impositions. When a spirited demand might restore harmony and friendship, it belongs to me only to state facts in the situation I am in, and for government to decide on measures to protect the property of their citizens, cause their flag to be respected, and to preserve peace with the powers of Europe.

I have the honour to be,

With high consideration,

Your most obedient

Humble servant,

IRA ALLEN.

ELIJAH PAIN,	} Esquires.
ISAAC TICHENOR,	
MATTHEW LYON,	
LEWIS R. MORRIS,	

Secretaries and Representatives of Congress, from
the State of Vermont, at Philadelphia.

P. S. Please to call on Mr. Pickering for the copies of two letters, dated in May and June, 1794, signed by Governor Chittenden, addressed to Mr. Randolph, then Secretary of State, on the subject of purchasing arms for the Militia of Vermont.

London, Dec. 19, 1797.

GENTLEMEN,

I have, through different channels, transmitted to you, for the information of the Government of the United States, the evidence in my cause, respecting the arms, &c. purchased in France; as I sent copies, printed pamphlets, &c. presume that some of them have arrived by this time, and I expect Mr. King will soon be specially instructed on that subject; it is a cause in which the honour of the United States, my honour, interest, and that of Vermont, are all concerned, which I have defended with a zeal hitherto unknown in this kingdom; for the first time the Judge of the High Court of Admiralty of Great Britain has been caused to join issue at the King's Bench to extend, for a short time, a rule of Court to prevent a mandamus being issued, to direct him to deliver my property on bail, which he obtained to the 23d of January; in the recess of the Court of King's Bench, the Captor's Proctor served my Proctor with notice, on the 5th instant, that in case the allegations of plea and proof were not entered in Court

on

on the 8th instant, he should move the Court to condemn the cargo of the Olive Branch; on the 8th instant I caused the allegations of plea and proof to be entered in Court, when the 12th instant was assigned to determine on the sufficiency or insufficiency of such plea, which was made in the most full and ample manner, and counsel heard on both sides, in the face of which, and the evidence you have before you, without the least evidence or circumstance being produced in Court against my Claim, the Judge was pleased to reject said allegations of plea and proof, and to pronounce said cargo to be a good and lawful prize to the Captors. I caused an appeal to be made to the Lords of Appeal, and then found means to procrastinate the appointment of appraisers, and consequently the commission of appraisement and delivery of the property to the Captors on bail; in the mean time prepared a memorial to the Lords of Appeal, who I knew would sit on the 16th instant. I then put on the uniform of Vermont, and with my own hand delivered said memorial, and obtained an order of their Lordships, stopping any further proceedings of the Court of Admiralty, till the further order of their Lordships, which I expect soon after the holidays, about the 20th of January next. Thus I have got clear of the Court of Admiralty, and forbear to make any remarks on the extraordinary conduct of the Judge, whose age, infirmities, &c. make him a fit subject to be laid on the shelf; at the same time have to inform you, that I employed

two short-hand writers, from whom I shall soon have a fair copy of every word that passed in Court, which, with other documents, will be the subject of a second pamphlet, which will be transmitted to you for the information of government, as soon as may be. In the mean time, I expect every possible assistance from the government of the United States.

In 1795, I was requested by the Governor of Vermont, to purchase arms, &c. for the Militia of said State, in Europe. I contracted with the Executive Government of France for 20,000 muskets, furnished with their bayonets, at twenty shillings and tenpence sterling for a musket and bayonet, paying one-fifth of the purchase money, and obtained a credit at five per cent. interest for seven years for the remainder.

In 1796, his Excellency Rufus King, Esquire, at the Court of London, was requested by the First Major General of the State of New York to purchase 6,000 stand of arms, furnished with their bayonets, for the use of that State, which he has purchased of the Executive Government of Great Britain, and paid thirty-two shillings for each musket, with its bayonet, and they are exported from London to New York. The legality of these contracts are equal, as they may respect the laws of Great Britain, the United States, that of Nations, and existing treaties; the only difference is, I purchased arms in
France

France more than one-third cheaper (with an extensive credit for part of the purchase money) than they could be purchased in England for ready money.

My detention is owing to the State of Vermont's bounding on Canada, where I am informed some disturbances subsist, (which I have reason to think the people of Vermont do not countenance) and from an unwarrantable combination for the benefit of the captors and others.

In the opinion of the best informed men, both English and Americans, I am now in the fairest way I have ever been, for speedy and ample compensation for detention, &c. as the original property is not transferred, but safe in store, and I have appealed on the evidence already exhibited, and shall contend for damage, &c. in the same manner I did in the first instance, in the Court of Admiralty. One year's ineffectual search for evidence against me has done away much of the prejudices that first subsisted. The cause is now before men of sense and candour, with Lord Chatham at their head; the Lords of Appeal are many, or all of them, Members of the Privy Council, their decision will therefore be the sense of the nation to bring the cause in the original state before them, and to save time has been the reason of my making the preceding decisive movements, and is an additional reason for the inter-

ference

ference of the United States, as I am fully convinced it is the wish and interest of both governments to be on friendly terms.

I have the honour to be,

Your most obedient,

Humble servant,

IRA ALLEN.

ELIJAH PAIN, NATHANIEL CHIPMAN, MATTHEW LYON, LEWIS R. MORRIS,	}	Esquires,
---	---	-----------

Senators and Representatives of Congress from
Vermont, at Philadelphia.

The Governor of the State of Pennsylvania, in November last, made a contract with an English mercantile House, for 10,000 muskets, with bayonets, which are now making at Birmingham, for the use of that State. The Executive of the State of Virginia, during the last summer, made a contract with an American merchant for 4000 muskets, for the use of that State; and the agent of the Virginia

ginia contractor is now in Europe for the purpose of procuring these arms, which he will purchase in England, or upon the Continent, as he shall find the prices the most favourable.

So it appears that the other American States are individually following the example of Vermont in procuring arms for the use of their Militia.

In consequence of some matters in the preceding Court days, General Allen was induced to employ a short-hand writer in the subsequent Court days, from his minutes the copies are taken, and published for the information of those who choose to trace this cause through its different stages; the reader will observe the dates, as the arguments will apply to the preceding affidavits, as they were at different times produced in Court.

In

In the Court of Admiralty.

The Ship OLIVE BRANCH, Capt. BRYANT.

Wednesday, June 21, 1797.

Read the Affidavits of NATHAN SMITH.

The Rev. SAMUEL PETERS, D. D. of Pimlico.

ROBERT EYRE, of Duke-street, Esquire.

Sir W^m. SCOTT.

SIR—IT is my duty now on the part of the Captors, to observe on this proof which has been brought in as further and supplementary proof; and, in order to do that with propriety, I believe it will be necessary for me to take some view of the antecedent evidence in this cause, in order that it may appear how far the defects of that evidence are supplied by this further and supplementary proof which is now produced before the Court, and this I shall endeavour to do with all possible brevity, as I shall certainly state no other remarks than such as appear to me to be fair and proper, on behalf of the Captors, and without an intention of pursuing, unfairly and with undue severity, the disadvantage of the Claimants, in any of those observations.

Sir, the capture of this ship was about the middle of November last, at a period of time, which it is

Q

very

very well known, was then extremely critical; indeed, this country was, at that time, as it happens to be at this time, engaged in a war with the neighbouring country of France;—a war, being not only in Europe, but carried on with a great deal of acrimony in the European possessions of the two countries, and extending itself across the Atlantic, and in the West India islands; it was the pride and intention of that country to keep up, at least, the spirit of hostility, which has dictated those exertions; and it was the intention of that country to carry that hostility, if possible, to the possessions which this country had on the continent of America; to be sure, when our interests were in any degree vulnerable, there could be no doubt of their disposition to affect those interests in the fullest extent. Sir, at that time this ship was taken; at that critical time she was taken with this cargo on board, under singular circumstances; at this most critical moment, at this time, when this country was so engaged, and when it was very well known that there were sensations more than feverish in many parts of the united dominions, as well as in this part of the world, and most of the Atlantic; this ship was taken, and I beg leave to observe, whether taken at that time or not, it is not a case to be considered in the way in which it is represented by the Counsel for the Claimant, as the case of an ordinary and inoffensive cargo going to another country. In my apprehension, the Court is under an obligation, and would not discharge its judicial duty, without
looking

looking with a very particular eye to this cargo; it is a cargo coming from a belligerent port; it is a cargo coming directly hostilely. Now, Sir, the presumption arising from such a cargo, coming from such a port, is, that it was intended for the use of the existing war, that it was intended for the particular use of that country under whose authority it was at that time exported: Undoubtedly not for a country at that time in profound peace; undoubtedly not for a country, the inhabitants of which had no occasion for arms, except for the mere purposes of military parade; who had, at that time, converted their swords into plough-shares, and their spears into pruning-hooks; for a country which had no part in the convulsions which disturbed their European neighbours. Such an appearance would raise a presumption that the destination of this cargo was hostile. In the case of a mere inoffensive cargo, such as sugar and pepper, no such presumption arises, because a nation at peace will eat sugar and pepper just as much as a nation at war, but if arms are imported, to be sure the *prima faciæ* presumption is, that they are for a hostile intention, and not to be carried into a pacific country, excepting to a place appointed for the purpose of the existing hostility. It has been observed, Sir, very truly, that a man may very innocently carry a barrel of gunpowder, but if the town is on fire, and it is publicly known that there are incendiaries abroad, I think such a person as that cannot complain if he is the subject of some pretty

rigorous curiosity, and if inconveniencies do happen to attach upon him, they are inconveniencies which necessarily follow from that sort of occupation in which he has thought proper to engage at so unfavourable a time, without providing himself with those excuses which would save him from such suspicions.

Sir, this is the natural and general impression of the cause on the first view of it, before I looked into the particulars, as far as they could be made appear to me by the inspection of the documents on board the vessel, or by inspection of the parole evidence taken by the persons on board. Now, Sir, the first point, the point of the greatest importance, if the property was going on an hostile destination, the neutrality of the property would signify nothing, it would not protect it from the effect of confiscation, because if this neutral thought fit so far to embark in hostile transactions as to embark in the assistance of the enemy, which would naturally be departing from the neutral character, he would become an enemy against that power for whose safety and defence he appeared to be acting. Now, Sir, I think that destination would not be visible on the papers, it would be cleared on these papers in the ordinary way of supporting armed force for offensive operations, by a country at war, but if a country, on the decline of its marine, is under the necessity of resorting to neutral ships, a belligerent nation having
the

the purposes of hostility at heart, could not hope to succeed except under the shelter of these papers; therefore I submit that the papers in that case would not carry with them their ordinary degree of credit, because you have every reason in the world to presume, that on an occasion so dangerous, every precaution would be taken of concealing the ultimate purpose for which such arms were designed; that is no more than the Court, or any man looking into the case, would find on the documents. Sir, you have the better right to expect that the destination would not be fairly represented, because you find this, that the neutral master employed in that ship was a person that had no objection at all to navigating under false papers, for you find that in this voyage he had acted under false papers, that the destination has not been strictly and fairly represented on the papers; however, I admit the papers do purport a destination to New York, and the gentlemen say, supposing the destination actually to New York, this consequence follows, that the voyage is innocent, and that the cargo cannot be considered in the nature of contraband; that conclusion I beg leave to deny, because if, notwithstanding this transaction to New York and the other port, there was an ulterior destination, to an hostile purpose, that would fix on this cargo the character of contraband. Sir, you find that, in fact, on the examination of the mariners, it appears that the general supposition on board the vessel was, that these arms were to be unshipped and applied offensively not against

the enemies of the King of Great Britain: Now I ask, if that was the destination, Whether, because this ship was first to go to New York with this cargo on board, it had not, nevertheless, an ulterior destination? Sir, I state another supposition, and I state it hypothetically:—We have possessions, it is well known, on the continent of America; there are such places as Upper and Lower Canada; suppose a hostile intention against one of those provinces; I will suppose that there has been, I venture to speak more than hypothetically, that there were sensations of great emotion in one of those provinces, Upper Canada, something of that disorganizing and dispirited state, which the French system, militating against the happiness of all the world, has dispersed over the whole universe. Now, suppose this, I beg to ask again, Whether the single fact of this ship's being bound to New York, would exonerate the proprietors of that cargo (being so applied) from the legal consequences? I apprehend, if the fact was proved, that the direction was to be to New York, yet still, if there remained a just and legal presumption that the ulterior destination of these arms was for a hostile purpose, it must submit to confiscation. Sir, if we had no trans-Atlantic possession, this would be perfectly good law; if this was a vessel going with a cargo to Russia, it would be an innocent cargo, but if going to a country directly in the neighbourhood of those provinces, in the state of alarm I have described it, was there any reason to presume that it

was

was intended for any of those purposes? Sir, I beg leave to state it as a position incontrovertible in itself, that this cargo would have the nature of contraband annexed to it. Sir, what is the defect which the present supplementary evidence is intended to supply? The first evidence would be the ship's papers, that was to clear away any alarms that a cargo of this nature would excite. Sir, the Court has not forgot that upon the very first disclosure that it was intended to carry such a cargo, the master revolted, he was struck with surprize, and expressed great hesitation to engage in such a business. Sir, what was the opinion of the mariners generally on board the ship? One of these witnesses says, that the general opinion that prevailed on board this ship was, that this cargo was intended for purposes hostile to Great Britain, and not for the sole and exclusive purpose of the Militia at Vermont; that was the last supposition that could naturally present itself to any body. Now let us for a moment consider what is the evidence, and what is the degree of satisfaction that your mind should receive from the examination of these witnesses, or of this evidence, so as to disengage your mind from the consequences of that impression which I say any man must feel on the first view of the case, such a cargo as never was heard of since the opening of Pandora's box in the world, and permit me, Sir, to ask, What is there in these papers? What is there in these original papers that can disengage your mind from the effect of that

impression which must unavoidably take its seat in every human understanding that contemplates it:— First, there is a bill of lading without any expression either of account or risk; but there are other papers on board, and I think they do deserve the very close attention of the Court, connecting them, as I now do, with the evidence that is exhibited, to be sure, I should not feel that I was entitled to use them, was it not for the papers now before the Court: First, there is a charter-party made in England, in this town; Who is this charter-party made by? Is it by the gentleman who is asserted to be the proprietor of these goods? No, it is made by Mr. Stephen Thorn, a person happening to be at that time in England. Is this a charter-party disclosing and stating the particular nature of these goods? No, on the contrary, it is a charter-party totally disguising and muffling up the nature of the goods to be sent, without one syllable that could explain to the master of this vessel the nature of that cargo which he was to carry, and when this charter-party was to be acted upon. The man expressed that degree of alarm and of horror which shews that he would not have acted upon it originally, if it had been fairly and openly avowed to him. Is there not, therefore, something originally indirect in the commencement of this business? Here is a charter-party from France, the real proprietor of the goods, though he himself had been in England but a short time before, is not mentioned, and no mention is made of the nature of

of

of these goods which formed the subject of this very singular adventure. But in the next place, there are other documents which are very essential for consideration; there are contracts which have been much relied upon, and which furnish considerable matter of grave remark. On those contracts, I must say, in general, that they appear to me, in their own nature, to be highly improbable in their relation to any circumstances which the attention of any man that can consider them can be called to; for, Sir, let me ask, Who are the contracting parties? not the manufacturer, not the merchant, but the direct hostile power of a belligerent country—a country which weilds arms, composed of troops, of various descriptions, and which had, at that time, and which has less at present, but which had occasion for the use of all arms which it could possibly employ. Sir, on the other side, Who is the contracting party? a gentleman, not a dealer in arms, not a merchant and speculator in adventures of that kind, but a gentleman of landed property, and a gentleman acting in this particular, in some degree, as the Representative of the States, acting, as this contract states, at the request, that is, by the authority of another State. What State was this? a State in perfect peace; but is it not notorious that an American, which would have been favoured with any privilege, at one time, from France, would not, at this period, as that country had incurred the displeasure of France to a very great degree, for it was

was but a very short time after the conclusion of the treaty with this country, and after those bonds of unity had been entered into in which this country is now happily united with America, that this belligerent country had unloaded itself of the instruments of war to a country at peace, and for the purpose of serving a country whose ambassador was sent out of that country not long before, adds very greatly to the improbability of the transaction. Sir, let us next observe the terms of this contract. It is a contract by which General Allen is to pay down a very small sum of money, and he is to be indulged for the payment of the remainder for a space of no less than seven years. Now I ask, is that the way in which government contracts to any body of men for seven years together? What is the security? It is perfectly well known that the ordinary way in which government deals with foreigners is this (I do not mean in particular the government of this country, but I mean every country, because it is a mode of dealing founded on the common principles of justice and prudence) why it is this, that if you sell, and the price is not paid, they take the security of some merchant resident in the country where the sale was made; now that some persons in mercantile credit are security to the government is undoubtedly true, but in what way is government to be protected? Why according to this, here is Mr. Allen, who has landed possessions in Vermont, and the government of this country is to be for seven years to haunt this

this foreigner, and foreclose his property. It cannot be thought, but that this does throw on the whole circumstances of this contract, a very high degree of improbability indeed. Sir, the next paper which I must call your attention to, is a certificate, which is signed by Mr. Chittenden. It attests, that Mr. Allen is a gentleman of honour and large landed property; that he was Surveyor General, and, in short, describes several functions of great respect in which this gentleman has been employed by government. Sir, it also mentions several situations which he has discharged with honour and fidelity, and that he had a commission to go to Europe. Now, Sir, was it not a most extraordinary thing, that if he was coming for this special purpose, that his certificate, stating and describing in this very precise manner all the former offices and public functions in which this gentleman was engaged, should maintain such a profound and total silence on the object of his coming, that it should mention nothing of his commission, but precisely and specifically stating that he was coming to Europe, should put it on the ground that he had a disposition to do so? Having a disposition to go to Europe, a purpose is represented of great necessity and utility to the State, and he is called upon to undertake the request of the Governor of the Province.

Sir, these are the observations which appear to me to arise necessarily on the view of these papers,
and

and I confess I do not feel myself in any degree disposed to admit that these papers do at all clear away the difficulties, or any part of the suspicions which seem to attach upon the case, independent of the papers; on the contrary, it appears to me that the papers, fairly and dispassionately considered, rather tend to augment than diminish those suspicions, and that they represent it as a case loaded with difficulties, as well from the particular evidence as from the general circumstances under which it is cloathed. Then let us see what arises from the parole examination of the witnesses. Do those parole examinations clear the way? I ask if it is possible? There are two mariners; that they should be let into this secret, this dangerous secret, if any secret exists, that they should be informed of these particulars, undoubtedly that is a circumstance not to be expected. Then with respect to the master, what is he? A man who has been described as so little content with the papers, as to their having a hostile intention. I will here, for the present, make no observation on the disposition of Mr. Allen himself, because it will fall to my lot to observe a little on his affidavit and on his examinations. I say the Court has now a presumption, and it will have its doubts and suspicions to discharge; on the contrary, there are two most extraordinary circumstances, one is, the general opinion on board the ship, not the private persuasion of one individual, but the general opinion was, that the cargo was designed for purposes hostile to this country.

Sir,

Sir, the other fact to which I must call the attention of the Court was, that this ship was disguised, that this ship was disguised after coming out of harbour, for what purposes, for the purpose of eluding British cruizers. Sir, the gentlemen contended they had a right so to do, but I shall not stay to examine that point, though there is no position more dangerous than that: I take the fact, and I rest upon that fact, that it was the particular and direct intention of Mr. Allen, and that the disguising of this ship was for the purpose of not meeting with the British cruizers. Now, Sir, look at the affidavit, it states, that Mr. Allen came to Europe with two intentions, the one was for negotiating the sale of land, effecting the making of a canal, a purpose with which I have nothing to do, and the other for the purpose of purchasing arms: Now let us see, at the outset of this business, what improbabilities attend that history, —first, that it was to purchase arms for the supply of the Militia of Vermont: Now that the Militia of Vermont should be at this time in such an unprovided situation and condition, that such a very large supply of arms should be necessary, 20,000 arms, I say, is in itself not a very natural thing, state the Militia as high as you please, and as high as the gentleman has represented it. Sir, it is not a very probable thing that the Militia of any country should be in such a state at once, as to require such a supply of muskets, but, if I recollect right, Mr. Allen admits, in his affidavit, that there was to be a considerable surplus
which

which he had agreed to dispose of for the province of New York, there it is a fact established, that it was not for any military necessity of the Militia of Vermont; it is not in its own nature very natural that a private individual should come for such a purpose as this without credentials, and without a commission, however respectable his private situation in life might be, it is highly improbable, and I cannot think that that difficulty is obviated by what that gentleman has stated, that every man in the Militia has a right to buy his own arms, but he cannot have a right to buy as many arms as could be lodged in the Tower, can it be consistent that these two propositions should be considered as the same, that because a man has a right to arm himself, he has a right to purchase a large quantity of arms? Why, Sir, every man in this capacity in the Militia of Vermont, whether he be a Colonel, whether he be a Captain, whether he be an Ensign, or whether he be a Private, each of these might have been so employed, and there is not one of them who might not, if every man has a right, not only to provide himself, but as much as he can distribute in the whole military establishments of the country, this must be subject to some public regulation, to some power, it must be under the guidance of some authority, some public authority; it is impossible that the purchase of arms for the military establishments of the country should be a thing left entirely to private discretion, without the interference of public discretion and public authority: I say it should

should be specially pleaded, it should be shewn that there is a country in the world, which is so neglectful of its own safety, that there is not a subject in it, who has it not in his power to buy as many arms as he thinks fit, not only muskets, but trains of artillery to equip himself and his neighbours. Sir, it is very extraordinary that a gentleman should chuse at this moment to come to one of the belligerent States to be supplied: And I presume Mr. Allen is a gentleman possessed of those measures of ordinary discretion, which would guide the conduct of other men, would a man not naturally resort for the purpose to a neutral and indifferent country, he must be aware, at least it is natural to suppose, that a country which had occasion for arms would sell those arms the dearest, and that it would create infinitely less suspicion to apply to a neutral indifferent country. Sir, in purchasing them from Sweden and Denmark, both neutral powers, there would be less suspicions of jealousy, than where he was acting avowedly in a connection of purchase with the government of that belligerent country; why, undoubtedly, this is acting, every body must see, with a disregard to his own safety, and which, taking it even to be a case of probability as to fairness, would be indiscreet in a very extraordinary degree, and it is that indiscretion for which a man can only blame himself for his own inattention to the proper measure of security: However, I will suppose all these circumstances over, and that you are perfectly satisfied of this, that a gentle-

gentleman coming from America thought it safe, and was rash enough to run into one of the belligerent countries on such a purpose. Now, I will ask, what would a person of common prudence do, what would be the natural conduct of such a person, in such a case, arming on a fair occasion of this kind,—first, it is perfectly clear that a person so coming would provide himself with proper credentials and commissions, that would shew at once the legality of the transaction in which he was employed, such a person would come with every possible degree of publicity; when I say every possible degree of publicity, I do not mean that he should merely make it a matter of private and frequent conversation with the persons of his own circle, because that is not making it a matter of publicity, but he should do this, he should take care that the object and nature of this mission should be publicly known to that government which had reason to be jealous about it; if Mr. Allen goes to a French Court to treat for articles, what would he do? Would he not have sent his public credentials to the Minister of that country, resident in that country? Would he not have taken care that those credentials should have been fairly stated, and in an authoritative manner to this country? Would he not take care to disarm those suspicions by every measure of frank and free explanation. Sir, there is no such thing appears in the conduct of this gentleman, and the only resource, (one is sorry to mention it) the only resource is to clap a patch on his vessel, to dis-

disguise his vessel, to put her into masquerade for the express purpose of eluding French cruizers, [*Sir James Marriott, on the high seas!*] instead of saying my intentions are perfectly innocent and pure, I come under the authority of the States, I desire you, my representative, to shew this, and I demand from their justice the protection of a special passport: Can any body doubt that if that conduct had been observed this would have been avoided, and I ask, is it more than the common conduct which guides every individual, and which would have dictated to every individual in such a situation. Sir, the affidavit of Mr. Allen states this, that he came to England, and that he enquired whether he could not be permitted to export arms from this country, then I am to understand from this, that he came with no original design to export them from France, because his first enquiries were directed to this country, that is what we are to understand, he goes on to state that he found that the French government were possessed of an immense quantity of muskets, which had been taken from their enemies, and which it may be very likely were taken by them from those enemies: Now here it seems extraordinary, that the immense arms which the French were under the necessity of selling, these were arms for which no use could be provided, they were fit for the use of other nations, they were fit for the use of America, and yet so singular is the structure of these arms, that they are perfectly unfit for the use of the

R

French,

French, fit for the use of every other country, but the French can make no use of them. Sir, I would ask whether this extends to brass cannon, whether it extends to a train of artillery, can it apply in any manner to that part of the adventure that there were goods of which no use whatever could be made, which could not by any possible application be of use. Mr. Allen goes on to state, that having, while at Paris, entered into a negotiation with the officers of the government there, that negotiation ended in a contract. Why, Sir, if there was this negotiation, there must have been, undoubtedly, many papers passing between the government on one side, and Mr. Allen on the other; we know that the business of governments is not done by oral negotiations, and Mr. Allen could speak no French, these negotiations must be carried on, I apprehend, in the usual manner, by petition and memorial, a person desires to make a contract with the government, he states his case, he states it by petition, he states it by memorial, that petition and memorial receive their answer, perhaps, receive at last a definitive answer, but all this passed in a room where nobody but General Allen and a clerk, or any body else present, but no suggestion, even of that sort, is thought proper to be resorted to, and, therefore, the inference is unavoidable, that this must have been conducted in the ordinary course, that is, by Mr. Allen on the one hand, and government on the other. Sir, Mr. Allen says, that he compleated a contract for supplying

plying the Militia of the State of Vermont, and, I observe, much stress is laid on this, that there was an advertisement. Sir, there must be some ostensible plea and colour, now suppose a man to come from Vermont, (I am speaking always hypothetically when I recur to that case) but, supposing a man had come from there to Europe, for the very purpose of carrying arms to be employed in the malignant purpose of a confederacy, why there must be a protection, there must be something to hold forward, and, undoubtedly, the pretence of supplying the Militia at Vermont would be very natural, and his affidavit would help out very considerably the ostensibility of such a protection; that circumstance is really no more than one might expect to occur, and that means should be taken to clear some circumstances to prove the publicity of the transaction, if it should ever come to be more particularly enquired into. Sir, the concluding part of Mr. Allen's affidavit, I think, shews that this is even according to the practice of America, a very singular undertaking. Sir, what is the practice of that State? There is the government on the one side, his application to the public representative of this country who resides here; it is not an individual coming here without any credentials which he can produce, but it is the public government applying to its public organ and functionary, the State of New Hampshire authorises its agent, this gentleman comes armed with the public authority of the country, and residing in a public

capacity for that particular purpose, so that it is a singular and eccentric practice of this State of Vermont, which, I will venture to say, is not to be equalled by any country in the world. Now, Sir, that these papers do not distinctly clear away the difficulties of the case, I am sure Mr. Allen must excuse me, if I say that they by no means do clear away these difficulties: I have been under the necessity of trespassing on the time of the Court to shew and state the difficulties themselves, in order to shew how far they may be supplied: It appears Dr. Peters, with very good sense, did the same on the case, namely, he called for the authority of Governor Chittenden; that Mr. Peters tells you, that when Mr. Allen spoke to him about the purchase of arms, and this deponent desired Mr. Allen to shew him Governor Chittenden's authority to buy arms for the State of Vermont, this was a very natural demand: I ask, what is the reason that the Court of Admiralty, in a case filled with such suspicion as this, is not to have the same suspicion which Dr. Peters thought himself under an obligation to manifest, by requiring, as he did of Mr. Allen, Governor Chittenden's authority. Sir, you have a certificate produced to you, that certificate states the general character and the formal employments of Mr. Allen, not the purpose for which he came, that ought to have been stated there, but these gentlemen say, on the part of Mr. Allen, that there was that which they understood to imply the purpose for which he came

came into this country: I will observe, by and by, on the extreme laxity with which that is stated, not meaning any offence to the individuals. Sir, my learned friends say that Mr. Allen left these credentials in France? Now, would not any man in Mr. Allen's situation have taken an authentic copy? Would he leave that without a regular copy representing the contents, that would be supposing that he had acted in that particular with the same indiscretion which I lament attended the conduct of General Allen from the first of this business? Why is not proof sent here, or affidavits made in France since the time that this cause was began, is it possible they would not have given up these papers in aid of justice, he might certainly have had it in his power, at this moment of time, to have produced those documents, he might have shewn these credentials, under the protection of which he was enabled to make this public purchase, for the benefit of that government which he represented. I have already said, and it is admitted, that had there been a long negociation between him and the government of France, there must have been many diplomatic papers, it is impossible they could all have passed in the silent and secret interview between Mr. Allen and General Clarke, or whoever they were, this would have shewn not only the origin, but the completion of the transaction, it is impossible but it must be within the power of the party to have produced evidence of that kind, but I do insist, and must insist, on the part of the Captors,

tors, that that is evidence which the Court has a right to see, and to have before them on the present occasion. Now, Sir, permit me to ask how is this supplied? Why you have a great number of affidavits coming from different gentlemen, one of them Mr. Phelps, I think all he says is, that Mr. Allen informed him that he had purchased from the French government, why a man coming with unfair intentions would talk in this manner, and call in persons who might afterwards be called as witnesses; every body knows it is the practice of persons the most disloyal in their intentions, in this country, to be talking of their loyalty before persons whom they have in readiness to appear as witnesses for them; he has been shewn a letter from the Governor of the State of Vermont, on the purchase of arms, why is not this letter produced? According to the account given, here is not only public credentials, but a private letter, yet neither are exhibited. Sir, Mr. Graham is the next witness, he says, he knew that Governor Chittenden gave General Allen a letter to the government of France; his first application was made to England for this purpose, and it was only on finding the difficulties which would attend such a purchase in England, that he afterwards resorted to France; he goes on to state, for whatever this letter of credence was, to be sure Mr. Graham's evidence is of no use, or of little use, because he says, he does not know the contents of it, or what it is about, at the same time it is a little

extra.

extraordinary, that in this time, he should not have taxed his memory about some of the particulars. Sir, as to the next witness, there is only some loose conversation between him and Mr. Allen. Sir, there is another Mr. Graham, whose attestation is likewise extremely light, as to a conversation which Mr. Allen, in America, had with him, respecting Mr. Allen's going the tour of Europe, and Mr. Allen he would procure arms for the Militia of Vermont, in case they could be provided in Europe, this is very loose conversation; the next is Mr. Stephen Thorne, who must be considered as a particeps in this business, he made this charter-party in England, for the benefit of Mr. Allen, for the exportation of a manufacture in France, knowing perfectly well what that manufacture was, but not chusing to express it, I dare say this is a respectable person, but I could have wished if, instead of describing what he was, he would have described what he is at present; he describes himself late a Justice of the Session, he has been ~~here~~ several years, and on what Session, or what Commission, we are perfectly in the dark; as to the object of his coming here, certainly not in that quondam situation in which he describes himself to possess in America, as a Justice of Session, and I do say that, without meaning any disrespect to him, it would have been a great satisfaction to the Court to have known what the particular situation of this gentleman was in Europe, what connection he has with the military service in France,

if he has any connection either in one government or another; I am not cloathing him with any of those characters, much less am I cloathing him with all of them, but it certainly would be a considerable satisfaction to the Court to know what the nature of that gentleman's employments are; at present, he says, that Mr. Allen arrived in Paris, and was under a total inability of speaking French, and he attended him, and he says he saw the papers, now I say that that satisfaction which Mr. Thorne had in the case, the Court of Admiralty has a right to demand, you have a right to see that paper; Mr. Thorne goes on to state the fact of his making that charter-party, why Mr. Allen could not have executed this charter-party as well as his proxy, Mr. Thorne, one does not well see again, Mr. Thorne does not execute this charter-party as Agent of Mr. Allen, no such thing, one would suppose Mr. Thorne himself is the principal, and he afterwards executes an assignment over, as if Mr. Allen had no concern in it. Sir, I take the liberty of saying that that is a very circuitous and uncertain mode of proceeding. Sir, the next witness is Dr. Peters, who, as I have told you, did ask that very natural question, where are your authorities? Who attested you? He saw the certificate, the passport of which is, that Mr. Allen is a gentleman of great respectability, &c. not a syllable about buying arms, in the certificate that is exhibited. Now that there should be two certificates on board this ship, and one exactly the same as the other, except

cept in the only material part, does appear a very extraordinary thing, and I cannot help thinking, (for I impute nothing more, I cannot help thinking) that there is some defect in the recollection of Dr. Peters, with respect to the precise contents of these papers; he says Colonel John Graham was also present, and heard of the said written papers, whereas Mr. Graham says nothing of the contents. Now it does seem impossible that he should have heard this conversation, of so particular and extraordinary a nature as this, and that he should have seen that document, and yet have totally dismissed from his mind every syllable of that document. Sir, the next evidence is Mr. Nathan Smith, his evidence goes but a little way, he says he heard him say he was authorised to purchase arms, that will not exonerate such a mass, and such a number of people from the general suspicion. Sir, the last witness is Mr. Eyre, all he says is, he saw a certificate, and that Mr. Allen was to come to Europe on public as well as private business, on what public business Mr. Eyre does not affect to state, but the especial purpose of buying arms was one of them, and, on a man of military occupations, as Mr. Eyre is well known to be, it is impossible but such a circumstance as that must have made its due impression. As for Dr. Peters, whose profession and whose business lays in a direction totally remote from any thing that has any connection with arms, I have already troubled you with his evidence, and such observations as occurred to me upon

upon it. Now, Sir, this is the whole of the evidence that is produced ; I am sure it is the furthest thing in the world from any intention of mine to press any one objection I have made unduly or unfairly in the cause. It does appear to me that there is a most radical and fundamental defect in that evidence, which ought to accompany a transaction of this kind, supposing it to be a fair and proper transaction. Sir, I insist upon it it is not to be treated on a narrow principle, it is a case of an extraordinary nature, it is a case to be treated in an extraordinary manner, and that we are not making an extraordinary requisition for those proofs which the fair and honest knowledge of any man will say we are not entitled to have, when I say the original credentials and the correspondence ought to be produced, and that without such documents this claim cannot be established.

DR. LAWRENCE.

SIR—THIS is certainly a cause of most extreme materiality. When it was before the Court, on the opening, on the reading of it, the Court thought it was so defective as to require some additional explanation, and as I collected the opinion of the Court, it seemed to think it defective in this point, that 20,000 stand of arms going from a belligerent country to another, was not so innocent, considered in itself, as to be clear of all suspicion,
under

under the circumstances of this case, and that such a cargo, so acquired, was not, in this case, so documented as to shew clear proof of that property; the Court did think that there was not satisfactory proof. Now, Sir, you are to consider how far it is satisfactory all together; now they have supplied more sufficient proof, we are ready to meet them on that proof, and I apprehend it will be for the Court to consider ultimately if they are convinced that this additional proof is sufficient and satisfactory in this cause. Sir, it appears to me, in the first instance, that there is not one single point upon which the Court can rest, that is not full of doubt, that is not full of suspicion, that is not full of legal presumption, and that does not require explanation. I, Sir, shall consider General Allen as he stands before this Court, a person employed in a transaction which, on the face of it, as it stands, appears to be a mercantile transaction; that may be, I see nothing to the contrary in this, but in the character of a merchant purchasing arms, he stands before the Court, and he must, therefore, be considered merely as a dealer in arms, unless, in this instance, he comes in some sort of public character; in that view, therefore, I shall consider this case, and what are the grave suspicions arising out of the transaction itself. Sir, the state of things when this vessel was stopped, was of a kind which has been mentioned to the Court, which, therefore, I shall not go into at length; it was a state of war between this country
and

and France, which was making every possible effort in Germany to compel the Emperor to peace, when they were sending every man they could collect with arms in his hands; the vessel sails subsequently during a period of time which has been stated, not hypothetically. It is known that there was uneasiness in some parts of our dominions at home, it is known that there was uneasiness in a sister kingdom, and it is remarkable, which is now known to the public, that on the very 8th of this month, November, government had possession of a paper which stated the arrival of a vessel which had arms, and that we should have plenty of arms. At that time it was natural that every sort of jealousy should have been caused; it is for them to make out, by the evidence before the Court, whether one or another suspicion is or may be well grounded, so as to warrant a juridical suspicion before the Court. Sir, with respect to the possibility of the intention of these arms going to Ireland, it has been remarked that this vessel was got a considerable way to the westward of Scilly (the particular place is not mentioned, but somewhere to the westward of Scilly) this appeared that it would not make that an impossible destination, but I do not see, from the evidence, any thing in the ship's papers to disprove that this property went under that suspicion. Next let us see whether or no there was any writing relative to this cargo; in that, Sir, it is indisputably the case that they themselves point to something requiring a possible explanation, because

because all the other witnesses besides Mr. Allen mention the suspicion, they see every thing suspicious; the mariners in this case do entertain suspicions that this cargo was going a cargo to New York, in the first instance, but afterwards to some ulterior port or place, and, perhaps, with respect to the master, he does not say the same thing, but there was some sort of transaction which made it not convincing to his mind, that this was such a clear voyage as must be attended with restitution. Now, Sir, let us see, therefore, what it would have been at the first moment that this vessel had presented itself to the Captain of his Majesty's ship the Audacious; he meets this master, he stops this vessel, he interrogates him, what does he ask him? In the first place, What have you on board?—A cargo of arms. Where did you come from?—Ostend, a hostile port. Where are you going to?—Going to New York. Have you any charter-party?—Yes. Where is it?—It is produced. What appears on the face of that charter-party?—that is concealed. What can induce a man to say this part is false, that is true, the nature of the articles, the name of the person who is the contractor, and the nature and destination of the voyage. He finds, as to the articles, that there is a concealment, every thing being silent there, then he asks General Allen, Were these made for you?—Yes. Then he finds two circumstances out of three to be false, and he must necessarily believe the other to be true. What does he further say?

Why

Why this is a vessel that I suppose went on some former voyage.—Yes. Have you any papers respecting that voyage?—Yes. Where are those papers?—Here are some bills of lading from Bilboa; and you came from Ostend?—Why true, I cleared out for these ports, but the real object is to an hostile port. At what period was that done? While he was actually under condition of the other voyage, this very charter-party was made at the time of that voyage existing, and it was, in truth, to go to a Spanish port, for it was, in truth, at the time a transaction connected in the circumstances of it with this charter-party, it is that, therefore, which applies with much stronger suspicion to this case. Why, says he, I had an account of a vessel that was expected, but this does not answer the description of it. Here are strokes of yellow and patches of black in it, it is completely different. Why since we left the port, we have altered the whole of our appearance, we have put on a mask and domino. Why, Sir, if she had had a cargo of pepper and grocery, she would have been properly detained; here is a charter-party defective in two parts, one of which is a concealment, the other is colour. Sir, I apprehend this case must be done away with the clearest possible proofs, then let us see whether the suspicions that arose at that time are completely done away by that which is now offered, it is brought here, and here is a disclosure of all the papers, and you were of opinion on these papers, that on that primary evidence

evidence you could not restore the property. Now what was the evidence on which you went to enquire into the nature of this transaction? Who is this gentleman that has purchased this cargo of arms? Is he a locksmith?—No. Is he any one connected with any trade of that sort? What is he? Has he a certificate? Not a glance of it, that it is upon the face of it a negative, for it only states, that he has a disposition to come to Europe, and that he has held several great offices. What are these arms? It is stated these are arms purchased in France, because they were unfit for the use of that State, purchased from the reigning minister of that country; a communication is produced relative to that purchase. On the face of that contract, what is the most likely thing? On the date of that contract, it is completely unaccountable that the government of France should, at that time, have sold a cargo of muskets, in that quantity, to America. The learned Gentleman said, it was easy to answer that; I will give him an opportunity to answer it. The minister of war does, in consequence of that authority, give a contract to deliver these arms on some subsequent payment, one payment down, and another in seven years, on mortgage of these lands in America. It was only nine days that they assigned the security, thus they had broken their treaty; it is only nine days before that, they took that strong measure on which they communicated to their minister in America; nine days after they sent them a cargo to equip 20,000 men,

men, with field-pieces, and give him credit for seven years. It is certainly a thing, in some way or other, to be explained, by some evidence or other, I cannot presume, I do not think that any man who hears me can presume at the motive for such a transaction as this before the Court. Sir, with respect to these arms, another thing may be observed, What is the authority of this person from America? I have mentioned already what was the certificate. An intimation was thrown out, that there was another certificate. I do not find that in General Allen's own affidavit, or in General Allen's own evidence. General Clarke, in his evidence, states a communication to various persons, who and what he is, but not that he had directions from Governor Chittenden, or any certificate to that effect. There is nothing before the Court but one single certificate, which does not go to that effect. It seems, indeed, to be asserted by General Allen, and there seems to be evidence of that, that after he had agreed for these arms, that he did send for papers, he intended something of this sort, in order to know what arms would be wanted for the Militia of Vermont, that shews he did not conceive it necessary that this 20,000 stand of arms and these field-pieces were necessary for the Militia of Vermont. It is said they are between 20 and 30,000. One of the learned Gentlemen says, I have seen them mustered in Vermont, twelve years ago; they were mustered above the age of sixteen; then it must appear that every person

person is necessary to bear arms. However, Sir, supposing that to be the case, are we then to presume that every man is without arms?—No. Then, Sir, there is another circumstance, that he had intended part of them to New York, but we find that General Allen knew that New York did apply to this country, and that the American minister in this country was actually treating for arms. This actually was the State of New York, therefore, at any rate, on the face of this transaction, here was a much greater quantity of arms than was wanted by the Militia of Vermont. How many did he want? A couple of thousand might be necessary for Vermont, and 1000 for New York, then there would remain the immense surplus of 17,000 stand of arms, for they could not have been disposed of any where else. Then there are arms enough to fit out a whole train of men. Sir, with respect to the security given to the government of France, the greater part of this is a purchase on a mortgage of lands in Vermont, I do not know that that is a considerable valuation, at the same time there is one circumstance necessary to be attended to, I apprehend the security of some person in the country is required, and I am yet to learn whether or no it is possible, in the situation of the country, a government can sue another State in that character, because that is a supposition of their having certain suspicions which may relate to that State, therefore, I apprehend, it would be a thing of novelty, and of considerable difficulty for

S

the

the government of France, under this contract, to foreclose this judgment in the Courts of America; upon the face of it, it is a case one would not wish to press to the extreme, and, certainly, there is that which requires the greatest possible explanation, the difficulty of any transaction in a Court of Justice of another jurisdiction between a foreign State on one side, and a neutral on the other. Sir, it is stated that conversations were had between Mr. Allen and various persons, and that they were had by him with several individuals, and that he thought and understood that he might get these muskets cheaper in France, and not be under the difficulty of getting an authority from his Majesty's minister. Was it not necessary to know whether this difficulty would or would not continue, having recourse to them relative to this canal? Was it not natural to have asked this country, having made that treaty, which was known, on the other side of the water and in France, whether such an interview could have been had either with his Majesty's minister or the American minister? But, Sir, how does the transaction proceed? General Allen goes to France, some time in June, and immediately, in a few days, within a month——

Court.—Had he any passport from this country? Where was it from, or where was it to?

Dr.

Dr. Lawrence.—Sir, there is a passport from the Duke of Portland to go to Amsterdam (that is the second passport) 2d of June he arrives in Paris, and this contract is made (very rapidly;) about the 10th of July Mr. Allen returns to this kingdom, he has spoken to Mr. John Putnam respecting the shipping of these things, and here, with the intervention of Mr. Thorne, a charter-party made of the things of this kind. Now, Sir, during all this period of time when Mr. Allen was here the second time, when he had already made the contract, whilst he was looking about for some means of conveying this, when, as it should appear, he knew that some suspicions were entertained, at this period of time is any further step taken? What would a person do under such circumstances?—Apply to the American minister—he would have stated the circumstances—he would have said, I have contracted with this government of France for so many stand of arms—I am going to provide the state of Vermont—I am going to supply part of the States of New York—give me a passport for this—it is compleatly innocent—I am carrying these arms from your enemies to your friends—I am doing you the greatest service—let me pass without molestation, for it is for your benefit. That was the application that might have been made, but not a single trace to that effect. Sir, there is the affidavit of Mr. Allen, which is to be considered as evidence, though only explanatory, not a single trace of any such application, as a per-

son of prudence, and a person of caution, would have conducted himself, to be free from all molestation from cruizers, and to lull every suspicion, and if not here, in the first instance, when he purchased them, then, in the second instance, when he wanted to go to France. Sir, I apprehend the first point of general prudence is, that Mr. Allen should satisfy this country, yet, as it is, it is incumbent on him to clear himself to this country, and he might, I apprehend, under these circumstances, have been nationally called upon to explain that in a manner so much the fuller, because he did not give that explanation in the first instance, when he might have given that explanation, and what is the strangest thing in the conduct of Mr. Allen, with respect to which I must observe one general thing, that as to putting these arms on board, though Mr. Allen was in France, and he did put them on board, the broker, who superintended the lading of this vessel with those arms, could not tell who they were for. What is there, then, in the preparatory examinations against all this?—Nothing but this, that the master has general disapprobation. He has been guilty of fraud, in various respects, in the first place in false papers, in the second place in disguising his ship to avoid the British cruizers; he is a person to whom full credit cannot be given. As to the other mariners, they knew nothing in the truth of the matter; they state the general suspicion on their minds that they were intended for some ulterior situation, not favorable

able to this country, and also, that the vessel was altered in her appearance on the high seas. Why, Sir, then these suspicions, which appeared to the Court at the time the case was opened, and when the evidence was read, are to be supplied by other evidence, which they have pressed on the Court.

Sir, in what manner have they at all come up to the fair demands of justice in this case, considering what was the original evidence? Here are conversations, and only conversations. Are those conversations things in themselves so clear, are they things going so completely to the transaction, to shew that the person who had them had some intention or other of a suspicious nature? I do not know that Mr. Allen had or had not. He stands before the Court as a person who was to have explained these things, whether he has or not is for the Court to consider, but the question is, whether the evidence before the Court is sufficient to do away those suspicions, that Mr. Allen, who is not a person dealing in arms, should yet deal with a foreign government, not in the point of wanting arms, because he is told he could get them cheaper in France, he has not shewn any attempt made in this country, no locksmith, no gunsmith, to whom Mr. Allen went, who said what was the price of muskets here, but two or three gentlemen, chiefly Americans, at whose tables he said he sat, and that Doctor Peters, I believe, said he might obtain them cheaper in France.

He goes to France, where he arrives in June, and he arrives at that time, and he was, at that time, unacquainted with the language of the country, that Mr. Thorne is obliged to go about the place with him to obtain a lodging, he could not obtain a room without Mr. Thorne.

Sir, it was as early as the 10th of July, almost immediately afterwards, that this contract was made. Now certainly, Sir, persons of this description, ignorant so far of the language of that country, it is no imputation on him, a person under those circumstances must have carried on that negociation by writing, and translated by his interpreter or friend, now we have half this affidavit from France, taken at France, signed by the American Consul, no evidence is obtained from thence, yet there is not a single copy of any paper whatever that passed between General Allen and the French Government, applying for these muskets, negotiating this contract, nor any affidavit from any person who attended, but it is as if he did carry on the communication verbally, and they have stated what he did in company, what terms were made, what difficulties were raised, how those difficulties were obviated, the whole course of the transaction; the mere common mode is by memorial, but is there a scrap of paper on that subject? Nothing at all, and that transaction remains unsupported: Nothing appears so as to shew you that the French Government made this contract, with

with not a single tittle of evidence about it, then after he had told Mr. Thorne with respect to these arms, and that they had not succeeded, he wished Mr. Thorne to assist him in this country. Sir, the whole of that transaction, therefore, is above all others required to be explained, and remains under every circumstance unexplained, with the knowledge only that this gentleman arrived at France without any previous enquiry in this country, without any interpreter, without any correspondence. Then, Sir, the question is about this certificate of Governor Chittenden. It was thrown out, and one should expect that to be clearly proved, it is thrown out, that you must take on the suggestion of Counsel, that there was some other certificate. Now, Sir, in the first place, it strikes us as a proposition, not supported in General Allen's affidavit, not supported by the fact itself, it is totally inconsistent with General Allen's affidavit, because if he had this certificate, which was to be a letter of credence in a French republic, what is all this proof of antecedent conversation in this country? Let us see then, Sir, how all these persons who are brought to depose on this subject speak of it. Here is Doctor Peters, here is also Colonel Graham, and there is Mr. Eyre. Now as to Colonel John Graham, he states himself, as knowing of a certificate given as a letter of credence to the French republic, but he does not know the contents of it, but he speaks of a certificate, he knows nothing of the contents, the contents of a

paper that does not appear may be set forth very accurately from the memory of the person; but no, he does not venture to describe it. The next person that does pretend to describe it is Dr. Peters, and he does describe it to that purpose which is presumed on the other side, he tells you of a general certificate which answers the description of this certificate, and that seems to be the origin of Dr. Peters's mistake, I cannot suppose it to be any thing else but a mistake and an error, he tells you, that in conversation he heard it was the intention of this gentleman to purchase arms in Europe; but these two things were in the certificate, or in conversation at that time; that some conversation had passed, two out of these three persons brought to prove this certificate do not agree at all in any thing that can make out that which is required on the other side, if there was another certificate, certainly that could be produced, as well as the correspondence on the other subject, if General Allen could send for several depositions to be authenticated, certainly it was an obvious thing, when they wanted to prove this very certificate different from the present certificate, when they were bringing conversation for that purpose, to bring from Paris that certificate itself, if it was there, or some account of it: It would have aided them so far as to have produced it, and it might have been a little incumbent on them to clear up such a transaction that certificate, or the account of it, would have shewn in the eyes of all nations, that they were treating

treating only with a person very safely, and that those arms could not, by any possibility whatever, be suspected of going inimically, but there are no such papers, and nothing but this slender evidence of two or three persons, all is left to the formal certificate, which has nothing at all of that authority which is required in a case of this kind. Sir, it has been said respecting that authority, that whether that authority did or did not exist, that an individual or a military man might be at liberty to purchase arms, it is a very serious position, so clear and known, and so decided a thing acknowledged by all nations, the damages, and the demurrages and expenses should be granted in the case of arms. I apprehend, Sir, that the Court will call upon them to shew, either as a general position if they can substantiate it, or else that it is a particular exception under some particular law in Europe, and in that case, I apprehend, no individual would be bound by it, that a gunsmith, a person who trades in arms of that kind, who is an open ostensible trader, may certainly have a quantity of arms in his house is true, but that an individual may have a magazine of arms for 20,000 men, that any three or four individuals, opulent enough, may have arms, and furnish 100,000 men at any time, that seems to be a position inconsistent with any principle of modern government. Sir, at the very outset there is that very strong presumption which they cannot get over, that they cannot have this quantity of arms for any private purpose

pose whatever, and that a man cannot erect himself into the General of an army distinct and independent of the government of his country. Sir, upon these grounds, therefore, I submit that in reality such a power must be produced, to shew the law of America, and be proved, in order to put General Allen into the situation of carrying an innocent cargo. Sir, I submit that we do not urge this on any ground that can take notice of General Allen doing any thing against the particular laws of the State, but that it is a case of every general transaction whatever, and that it is contrary to all governments in any state of social life; and also—that the circumstances I have mentioned in presumption of law are against the possibility of it, and in consequence it lays on their side to remove that presumption, and if not, they lay under the weight of it, and which must arise out of those circumstances, that which will have their operation as to the truth of that transaction which is now before the Court, and that not even directly or immediately as against the law of America, but in that manner in which I submit it to the Court. Sir, I submit that there has been in this transaction also a colouring, and that whatever it may be, it throws the burthen of proof upon the Claimant, even if this had been the most innocent transaction, and the most innocent cargo, and had been destined clearly to New York; because the charter-party is full of difficulty, because the vessel is disguised, because the vessel, in which this

was

was placed and connected, held forth a false destination. Sir, they brought the proof arising from these circumstances, and they are acted upon when it applies to a cargo of this description, going from a belligerent port, and going in truth from the hands of a government that is at war to another, that is conterminous to those maxims of a country that is not at war, that is conterminous to that state for which it is said they are purchased. Sir, in such a case, I apprehend, that is a clear position, that it is not the first destination, but that it is the ulterior and final destination, it is the purpose for which they are going, and not the port at which they are landed, and for what use. Sir, we submit also before the Court, that there is no sufficient proof about what ought to be restored, and as to this particular case, if the Court finds a hostile contract, when that government had determined nine days before only to break that contract which it set up, and under which the arms were going.

Now, Sir, I mean to throw no sort of imputation on General Allen, but he holds out no particular privilege: We know that persons so engaged ought to avoid all suspicions, and the owner knows whatever can make full proof should be supplied, where there is a doubt, there should be something to supply that deficiency; when there is proof that requires something to be thrown in, that something must be supplied: For that purchase which must have been by
con-

contract or negociation, and of which there is not that clear proof, must be made clear to the Court, and under such circumstances the Court thought necessary that this property, which was transferred from the government of France to General Allen, should be enquired into, there being nothing but that sort of proof which has been mentioned, naked of all those circumstances, and of that further proof which the Court thinks necessary in all cases, and which might have been produced to the Court from France, in this cause. Sir, this is only to be supported by the oath of General Allen, which is only to be considered, at the best, as the oath of the most respectable person in the world, claiming his own property. Sir, under these circumstances, and every possible presumption against this contract, the particular juncture, the particular history of this transaction, between France and America, in which this contract was made, we do submit that they have not given this Court all that proof which the Court thought necessary, and that therefore the necessary consequence must follow in that case, that not having relieved themselves from the burthen of proof in this cause, they shall not have the benefit of the claim they have put in.

Sir James Marriott.—I am not descending from the character of a Judge to that of Counsel, when I say, that this is a hostile intention against this country, I do not say against America ; I stated every defect
in

in the proof, every defect that arose in my mind, I ordered him to bring further proof, you had every thing, there was the proof at once—read it. Sir, we are ready to read it. Now I have given the Counsel on the other side time to read it, and I have told you where you are defective, it is very much to the disadvantage of General Allen, because General Allen ought to have time to consider, if I must use military terms, whether he should reinforce himself, and how he should act, whether he should fall back or whether he should advance, he ought to have done it; but there was no occasion for such impetuosity, the question is—whether he means to bring any further proof or not, for this is not sufficient proof, in my judgment.

Dr. Nicholl.—I am not authorized to make any declaration till we have received the judgment of the Court on these proofs, then I will ask the General.

General Allen.—I am ready, either one way or the other.

Dr. Nicholl.—Sir, General Allen has heard in this cause what has dropped from the Court, and he feels that his case is so strong, that he cannot help entertaining a degree of confidence that the Court will think, after his Counsel have submitted all the considerations they have to offer, that the proof is sufficient.

Court.

Court. — You do not say then whether you mean to procure further proof; the Court have already pointed out to you where your case is deficient, and you was to produce proof, now you are to argue for its sufficiency. I certainly shall not permit you to go into the origin of the world, and the flood and the fall of Babylon, you have heard my observations, if it should turn out against you, you must blame yourselves for the consequences, the Court have done very fair, and have been amazing lenient, if you do not, I shall give my opinion now on the whole of the matter, and I must tell you, it does not strike me that this is sufficient in answer to those defects I have pointed out; as to the party, I always lean to the side of the party, but I have told you the circumstances, and the single point that rests with you is, whether the proof is sufficient, and comes up to the point; if I was to advise General Allen, I should advise him to take more time, it is nothing to me, I have more pleasure in restoring than condemning at any time. I am very sorry to see mankind falling into such confusion, but there is so much of the spirit of the first-born Cain enslaves every mind to go into the State of America, to disturb these colonies, when we all know what has been done, and done in America lately by some of the contracts. I say no more on the subject.

Dr. Nicholl. — I have done my duty in attending to you, Sir, I cannot say any more, I am ready to offer those arguments which occur to me.

Sir

Sir James.—I am ready to hear you, so you have nothing to ask for but the word of command.

Dr. Nicholl.—I would with great deference submit to the Court, and with all possible respect I am sure, whether the Court would make that order after the Counsel has been heard.

Sir James.—If you require it I shall give further time, if not, you will go on. I think you cannot possibly, with any modesty and decency, support your arguments that this evidence comes up to the objections stated by the Court, and yet you will offer them.

Dr. Nicholl.—I shall certainly, Sir, bow with the greatest deference.

Sir James.—Do what you like, Doctor, I am sure I do not like talking myself.

Dr. Nicholl.—I am not willing to fire off my gun, but to wait the word of command.

Sir James.—Mr. Allen, do you chuse to have the business argued this day finally? I shall give no encouragement to increase the Proctor's bill in producing one species of proof after another, but do you choose to put it off till next court day, or do you choose to put it off and bring forward such
assist.

assistance as you think proper to reinforce your cause?

General Allen.—Sir, for myself, I suppose I have sufficient evidence, if this is not sufficient; if I knew what was sufficient, I would endeavour to procure them.

Sir James.—I have pointed out what is sufficient, and your Counsel this day—

General Allen.—I think, Sir, it is the opinion of my Counsel that the proof is sufficient.

Sir James.—I say I will hear it ultimately, I will not have proof brought in to detain this Court from all other business from day to day, when first I ordered further proof, if you do not bring further proof, it must be a very serious thing, put off this cause till next Court day, then Mr. Allen may have the benefit of consulting with his Counsel, it is better than any taking here in Court.

ON THE MOTION FOR FREIGHT AND EXPENCES.

On the Affidavit of the Master.

DR. NICHOLL.

SIR—It was not suggested that the master was privy to any ulterior hostility previous to which this cargo was to be applied after his coming
ing

ing to America, we say, that this vessel was really destined to America, this master was not privy to any hostility previous to coming to this country, and this affidavit shews he cannot repair his vessel without obtaining a decree of this Court, and consequently not till there is a decree for that purpose, and I trust the Court will see that there is no reason for reserving the conservation of the freight and expences, seeing it can produce no inconvenience, and it can do no other than cripple this vessel to remain here a considerable time longer, till the whole question is disposed of.

Sir James.—It has never been mentioned before, the motion is premature, it is improper, I am sorry to say it, I say that I have never known such a petition before the Court, it is an unreasonable question now, it will properly come in by and by, there is no reason for it, if a man wants to repair his ship, in God's name let him repair it, and he can have credit enough in London; Mr. Allen you have credit; your motion, Doctor, is premature, I neither reject it nor take notice of it.

[*Adjourned to Thursday, June 29.*]

A true copy, examined by my short-hand notes,

E. HODGSON,

*Short-hand writer to the Old Bailey, Elim-place,
Fetter-lane.*

At the Court of Admiralty.

Thursday, June 29, 1797.

THE OLIVE BRANCH.

FURTHER PROOF.

The Affidavits of General Allen read, and another Affidavit.

SIR WM. SCOTT.

SIR—IT is my duty to submit to you some observations on this supply of proof, and the only question in this case is, Whether this proof is of that nature which will supply the defects of the former evidence, which we have pointed out to the Court pretty much at length, in our former observations on the case? And, indeed, I may venture to say, with unnecessary length, in as much as those defects I stated were pointed out by the Court itself, in a much more forcible manner, in the first view of the cause which the Court had taken on the first hearing of the cause, and that will undoubtedly make my duty much shorter on the present occasion. Sir, this having struck the mind of the Court, must now be considered as decided points, and not as matter of further discussion and argument.

Sir, the first affidavit is that of General Allen himself, he says, That he formerly had in his possession

from an instrument under seal of the State of Vermont, to him, for the purchase of arms, for the use of the Militia of that State, mentioned in several affidavits made and exhibited in this cause, which order and request and certificate were laid before the French government at the time of his making the request for the arms therein-mentioned; he says, that being asked by the French officer to leave the passport and certificate with him, he objected thereto, by reason that they might be of further use to him in Europe, as a proof of his character, but he consented to leave the order of Governor Chittenden's, as considering the object of that order to have been completed. Now, Sir, whether it had been considered by us as necessary is not material, but what is of much more consequence is, it has been considered by the Court as a most extraordinary thing, that this document and certificate, which gave to Mr. Allen the authority of purchasing arms for the State of Vermont, that it should not have been forth coming, and undoubtedly the first thing that lays upon Mr. Allen is, to account for the non-production of that most important paper. Sir, it is sometimes represented in these affidavits as if this was a private speculation of Mr. Allen's, at another time he is represented as acting as agent for the Government of Vermont, as being merely instrumental in carrying into execution those orders, which were found to be absolutely indispensable. Sir, what the reason for that is, does not appear, for there is no production

of this article. Undoubtedly, if the transaction is any degree questionable, the Court would be desirous of having that original document. If it is necessary to shew this was under the privity and authority of the Governor of Vermont, it would convey to the Court the highest satisfaction, being the very radix and foundation of the whole matter, and the reason for not producing it is, that General Allen had deposited his other certificate with the French Governor, and his other certificate he insisted on detaining, but that particular certificate he did not feel himself under any obligation to demand. Now, Sir, I cannot help thinking that it is an extraordinary circumstance in this case that General Allen should not have been more rigorous in insisting on the possession of this other certificate; he says it was necessary it should be produced to the French officer, though even that can hardly be any very great obligation, because if General Allen was applying for arms in France, it could hardly be supposed by the French Governor that these were arms for the French country, and the general certificate that he carried with him was to be deemed sufficient for that purpose, for I do not understand that that certificate from Governor Chittenden in any manner grants the permit for these arms from that Government, then there would be but little necessity even for the production of it, but for the depositing it in the custody of the officer of France, one sees no possible necessity; where could be the necessity?

necessity? for Mr. Allen says, his contract was fully completed, his contract was carried into execution, the danger he had to encounter would be in the conveyance of those arms from France to America, and there would have been the greatest cause as well as the greatest propriety and necessity in having this certificate to produce. Sir, the taking up of this ship for the purpose of taking out such a cargo as this, awakened the jealousy of the British Governor, and he sent out cruizers to intercept her. Sir, Mr. Allen knowing the common transactions of life, would have found himself under the necessity of applying to the French Governor in this case, if he had been so unadvised to leave his certificate there; it follows it will be incumbent on him to explain the origin of this business, and to shew it is not connected with any malignant aspect to the Government of Great Britain; he should have said, "I am of opinion that the papers which were of a public nature, the commission under which I purchased, will be most valuable for me," and every man would have joined him in the same opinion, but no such paper is produced, and still more extraordinary is this, that even at this present time no such paper is produced, because, undoubtedly since the capture of this ship, it clearly appearing from the intimations of the Court, that such a paper as that would be a most material document, and during the time which has elapsed since the business, there might have been opportunities presenting themselves, almost every

day, of obtaining the restitution of these papers, or of obtaining some copy, authenticated in a regular manner, and I am the better justified in saying that, because you have had many affidavits taken in Paris since this business commenced, and there has been no notice of any efforts made at any public office in France for that purpose; if Mr. Allen had applied, and his offer had been deemed unreasonable, although it was for the protection of an innocent man in an innocent contract, which he is said to have made, it would have been his duty, undoubtedly, to have stated it to the Court. But certainly, Sir, if that Government, such as it is, has not cast off all sense of justice, they would have furnished him, they were bound to furnish him, *ex debito justitiæ*, if he shew the necessary credentials, either with that certificate, or a copy of it. Sir, here is, then, a failure of this material document, and it is, in the judgment of the Court, upon the observations that have been stated to you, Sir, and which will be stated by the learned Gentleman who will follow me, whether it is, in any degree, satisfactorily accounted for. Sir, Mr. Allen goes on to state, that the paper writing which he has annexed, contains the true copy of the landed certificate, which he declined delivering up, which is paper A, an account of his landed property in America, which this does not seem to appear to me to be very correctly stated, but they do not seem to appear to me to have any connection with the present case; if it is to be urged that

That these lands and mills, and so on, were to be the security to the government of France, it will prove to be a very high degree of indulgence indeed, for I believe it is not a very common thing for Governments to give credit for seven years, and if not granted by any one person in their own dominions, they always take care that their security shall be given by those on whose person or on whose effects the Government may come, if there should be an insolvency. Sir, here the Governor of France was called upon in case there should be a deficiency of payment, suppose you should condemn these goods, and General Allen should refuse to pay the French Government, how is the matter to end? Is the French Government to go and lay hold of this landed property and mills? Is it a probable thing that a stranger and a foreigner, make him as respectable in point of character and in point of fortune as you please, is it probable that this Government should negotiate with a stranger in this manner? Sir, he goes on to state, that the negotiation between the French Minister and himself for the arms in question, was principally verbal, he does not say that they were entirely verbal, and if not, there must be some documents, it is impossible they can be carried on without, we all know that the written documents, when obtained, are deposited in public offices for the security of those who fill up those public offices, and hardly such a thing as an instance of negotiating for a purchase, that is of any considerable extent,

and in which this amazing indulgence, in point of fact, is to be granted to a foreigner, without there being considerable steps which lead to such instruments as these are; General Allen says, they were principally verbal, thereby admitting, most clearly, that they were in part written, and that there are written documents, which might be produced on this most principal part of the transaction; he says, they were carried on by the means of General Clarke, by whose means, he says, the transaction was carried on, who spoke the English language. I recollect I did say hypothetically, because this General Clarke is a native and subject of this country, is a disaffected subject of this country, who has taken his station in the military service of this public enemy, he was born in France.

Mr. Slade.—No, he was not born in France.

Sir Wm. Scott.—Then I am mistaken with respect to that fact undoubtedly.

Sir James.—We know nothing about that.

Sir Wm. Scott.—Sir, I understand General Clarke has been in the military service at Bristol.

Sir James.—There is a General Clarke that is employed in the aquatic line, but that a General Clarke was in that tour in these negotiations, as a party

party in these negotiations with Mr. Allen, he himself not speaking French, you cannot go into the evidence to know where he was born, till a man is brought up to the Old Bailey, you must take it as it is, he might be a Frenchman, and he might be in England, and speak the English language; well, how Mr. Slade knows that he comes to be born in France, I do not know, you can make no use of this man either one way or the other.

Sir Wm. Scott.—Sir, I have no particular care on this point, with respect to the fact, I do not pretend it is within my knowledge, but I understand it to be a fact that is notorious, however, at any rate, it is a contract, which is contracted under the auspices and by the interposition of General Clarke, you have, at least, therefore, the opportunity (that is, Mr. Allen has the opportunity) of having the testimony of this Mr. Clarke with respect to the particulars of that negotiation; Mr. Allen was perfectly unacquainted with the French language, therefore the whole of the business must have been through interpreters, one of which turns out to be this General Clarke, who is very competent to have given an account of the nature of this negotiation, and the principles on which it was conducted, and the grounds on which it was conducted by Mr. Allen. Sir, this affidavit goes on to state the number of persons in the State of Vermont, and that by the laws of the State of America, each militiaman is allowed to find
his

his own musket and field-piece, &c. to buy arms, and convey them into the said States, as will more fully appear from the papers coming from a very high and respectable authority, that is, from Mr. King, what he says is this, that the laws of the States do not prohibit, and therefore it is free for any subject to purchase, without any limitation or restriction whatever. I would not take upon myself to say but this certificate does not say more than that there is not any positive law of the United States that forbids the importation of a cargo of this nature into America, or into Great Britain, but I say the nature of the cargo imposes the restriction itself, though there is no Act of Parliament, therefore I cannot speak from the black-letter book, and shew this written prohibition, yet, in the nature of things, it is that which every Government in the world would enjoin, and, therefore, must be considered as an existing regulation, that every individual should not be at liberty to make his own house a magazine of muskets to any extent whatever, or to make his own garden a park of artillery to any extent whatever, but it clearly appears that it is that which, from the nature of it, must be subject to regulation, it must be subject to the cognizance and interference of Government, and which a man cannot be supposed capable of doing without some authority from Government; General Allen himself has alleged, that he had an authority from Government, and all the burthen which we impose upon him is to shew that
 authority;

authority, that he did it at the requisition and under the authority of the Government of the Province. Sir, it seems General Allen had doubts on the subject, he applied to Mr. Munro, the American Minister, and what has he told him? He says, he knew of no law to the contrary, so that it seems to have been a matter of doubt between Mr. Allen and Mr. Munro, one the proposer, the other the resolver of the doubt on that capture. It is a little extraordinary that a regulation of this kind must be a matter that can be conducted, and ought to be conducted, only under the cognizance of public authority. Sir, these are, I think, the material passages which are contained in the affidavit of Mr. Allen himself. Sir, there are two other affidavits here, one is of Mr. Scott, who says, Mr. Allen talked to him of considerable enterprizes, on which he deliberated purchases of a very different nature, that he talked with him of commodities of a very different aspect, and that he talked with kind intentions to some of his country relations, importing a considerable quantity of linen into America, but in what way that is to be applied, or in what way these linens are to white-wash these muskets and artillery, I cannot say, and I confess, till I hear, it is impossible for me to conjecture. Sir, there is another affidavit of a gentleman, who is conversant in the subject of purchasing military feathers, that Mr. Allen talked to him of purchasing feathers for the State of Vermont; why if the muskets had an
 hostile

hostile intention, the feathers might have the same intention, but the ultimate destination of both remains the common point on which the Court is to determine, therefore I can hardly think that this affidavit weighs a feather in the case. Now, Sir, thus stands the evidence, I shall not trespass longer on the time of the Court, I need not point out what defects there are, how far those defects which the Court has observed, and which the Court expected to be satisfied, are really satisfied to the Court, for the Court alone to determine.

Dr. LAWRENCE.

SIR,—On the former occasion, a further supply of proof had been called for, and we thought it was not necessary for us to point out the circumstances, though we did at some length, in order to take a full review of those objections that occurred to us, not with a view of adding any thing, or that we could add any thing further to that which was before the Court, but fairly putting the whole of the cause to revive the memories of the gentlemen on the other side, that they might apply themselves fully to answer the whole evidence: At present, Sir, as that is so recent, it will be only necessary to state that we did intend to recapitulate any circumstances of suspicion in the whole course and body of this transaction itself.

Sir,

Sir, that there were suspensions on suspensions in the whole, disguising the ship, and the other circumstances, and that there were also some more particular suspensions which has appeared, and to which it appeared necessary to apply some further supply of evidence, as to the contract from General Allen with the French government, that is, the paper which was his authority from Governor Chittenden; the next is, whether there is any law in America, that such a thing may be done in America, so as to do away any impropriety in it. Now they have viewed their case, they have in truth brought further evidence merely to these two points; with respect to the two other affidavits they apply to slender and extrinsic circumstances, to which I shall shortly allude, when I have said something of this affidavit of General Allen's, first as to the transaction of the negotiation, and secondly, when considering a cargo of this kind without any authority from the State of Vermont itself, now General Allen gives, in the first part of his affidavit, the account of that transaction and circumstances of that contract, and of that authority. Sir, it was remarked by the King's Advocate, that the time of this transaction was a most important one, and that it was also important as to its foundation, and also as to the property: That this transaction was left wholly destitute of any evidence, although it must be in writing, or by the intervention of some persons, who might in this case have been examined; we now come to the affidavit
of

of General Allen to this fact, and we are grounded, as it appears to me to say, that this does in truth strengthen the objection which was then urged, chiefly, that it was carried on by the verbal intervention of a gentleman, General Clarke, who spoke English perfectly well, he is not an obscure person, he is not an Ubiquarian, such as some Americans in France may be called, he is a person conspicuous in the eyes of all Europe, who might have been found out in this period of time to relate all he knew of this transaction, yet, in the affidavits from Paris, not a single syllable from General Clarke, only in General Allen's own affidavit, who says, that General Clarke was a person that did intervene in this business, we have not a single scrap of paper, there are parts of a conversation which did not pass in general conversation, in that manner which might, if in writing, be produced; there is nothing to prove the contract; What is the contract? What is the foundation of it? Why, that there was such a certificate from the States of Vermont to General Allen, there is not a single syllable of that certificate from General Allen himself, who must have known more of the matter, but simply that such a paper does exist, and that it is left in the hands of the officer of the French government, and, in all probability, is there at this time. Now, Sir, why presume that the paper is lost, has General Allen any reason to presume it is, the circumstances are directly to presume the contrary; for what is this transaction? It is not a thing

at once finally passed, it is not a thing that has taken place, it is not a thing that is completed, it is not a thing that is torn to pieces no more to be found of it, but, Sir, it is a transaction where the payment is full of suspicion, where there are to be instalments for seven years to come, it will not be completed for seven years, it is not to be carried into effect till the next government, perhaps, according to what we have seen in that country; it is a transaction which those persons must be obliged to have an account of to justify themselves, and those that followed them, when it was ten days after the date of that decree, of the executive decree, under which Mr. Day acted in America, and which was a decree, that in truth put an end to every treaty between them in America, for they insisted on searching their ships contrary to that treaty, and the State being jealous of those rights, and actually declaring that power, they would still be more jealous of those rights, it acted as a declaration of war, and they would be still more jealous with respect to papers of this kind, to shew their conduct to their successors, because it would look a little awkward that they should send 20,000 arms to that very country which was at the very point of going into war against France, it is important above all papers that can be named, and this is the very paper that must be guarded with all possible caution, and might be obtained by Mr. Allen as evidence in this Court, but if it was not to be obtained, it is impossible the Court can feel those demands which they have already made,

to

to be sufficiently satisfied with such sort of evidence relative to that paper, as this which is now produced to them. Now, Sir, how does it stand with respect to the affidavit? Some circumstances are thrown in merely as to the numbers of the Militia of Vermont, I have no doubt but it may be sufficiently correct, it certainly does apply with respect to the general evidence we have on that subject, this circumstance is notorious, from these documents, and as far as we suppose they are increased in the subsequent period of time, what is this, why that in 1792, there were 22,000, and now General Allen thinks there are 24,000, and his division is only 5,000, there is nothing to shew us that any of those persons were without arms at the time General Allen left America, so as to make it necessary that those arms should be bought for those men, and in this length of time they must have been armed some way or other. Sir, as to the letter M, which certainly is an affidavit, it does not seem to me to be of any great use in this case, the only circumstance I can make out is this, that there is plainly a certain number of arms, that at New York there were 5,000, all these men might have muskets these ten years, and yet not all those military decorations, we know many Generals of good taste are continually changing the ornaments of their men, sometimes they have a cuff of one sort, and then an epaulette is changed, sometimes worsted cuffs and feathers, sometimes plain cuffs and feathers, always changing, but as far as it goes, Mr. Allen observes a general conduct, he orders

orders a few feathers, this order is carried to the full extent, beyond any thing that is pretended in this cause to have been given, beyond any acting necessary in requiring arms for the State of Vermont, or for the acting part of the State of New York. Now, Sir, certainly we did not mean to argue, that in any one State, there is any positive monopoly law to prevent these things, but we apprehend the export of arms, and the import of the standard of arms, to be so immediately connected with the sovereign power, to be so immediately under the controul of the State from the general subject of the law of nations, from the law of civil society, as well as the law of nature, that that power of the sovereign resides, and it is not to be expected that you should find a positive law to prohibit these things, that if not positively allowed by law, the other law is supposed to be in force : This affidavit, supported as it is by Mr. King, goes a very little way indeed on that subject ; Do they know of any European law in the State of America to effect that prohibition, therefore they presume that it had been perfectly free, and that it had been allowed, but if the presumption had been properly drawn, the Americans are somewhat now as an independent nation, and have not fully examined the principles of jurisprudence, to know how such a measure applied, if there be nothing here to shew there is any positive licence of that positive sort, they are thrown back again on that which they feel to be the very pressing part of their case ; to

U

leave.

leave the authority of the particular government of Vermont, which was supposed to be in Mr. Allen's possession, in order to give him some sanction of this kind, for, Sir, I have already stated of what kind that description may be, every thing remained in a state poor and weak, only that there was one paper, one writing on the subject, and that there were transactions and negotiations on paper, and that there was an affidavit obtained; as to this other affidavit in the cause, it simply states General Allen in the character in which I apprehend we have properly stated him, as a mere Claimant of all this cargo, not having any particular privileges or immunities, not in his military situation, not in respect of the particular places he filled, but only as a private Merchant; that he was carrying this business on to a considerable amount if his project succeeded, that he should be then a very considerable merchant on his own private account. Now, Sir, I apprehend the Court often sees something of another character contrary to that which we are attempting to give Mr. Allen in this particular instance, a person that claimed the protection of the States and of Government, it was not transacted in the common way, it was not transacted in the common form of private business, here you find he was a private merchant, he was carrying on business of various kinds, and, therefore, he is to be considered, before this Court, as a Claimant who had the claim of justice, but no particular allusion to his character, when known, that he is a fair Claimant

in

in this Court, as every person is presumed to be a fair Claimant, till found to be otherwise. Sir, I have only to remark on the omission that thus strikes me as arising on the face of those affidavits, we have from Mr. King a certificate, and we have an account of some conversations, but we did, in the first instance, observe to the Court that silence which we did not in the first instance approve, that General Allen did not originally take any notice of the intention he had to the Government, that he did not make any enquiries on the price of arms here, but secondly here is a contract, he did not state to Mr. King, with whom he had then a communication. Now we have Mr. King brought forward in the cause, we have the account which he gives, and the account which Mr. Allen gives, and we find that silence still remains confirmed; now it is clear to the Court, that he certainly could have had any conversation of that kind, and that it is only a general conversation, that Mr. Munro had told him he did not know he was prohibited, and therefore he thought this cargo might go fairly. Sir, here is therefore a silence in these material points, and from what is told there is an addition given in point of weight from that silence, by not saying now all that could be said on the subject; and it does not appear till after the contract actually was made, that in general loose conversation any thing was said to Mr. Munro. Sir, there is one gentleman who gave evidence on a former occasion, and he speaks of a conversation that was mentioned

to him at Paris, that this General Clarke, a person of the English nation, a person who spoke the French language, that he accompanied him through France, I do not apprehend but that the clandestinity remains, more especially where nothing at all is proved of what passed from General Clarke at the time, it is suspicion merely, but that without legal presumption, in a case of this kind, is not sufficient.

Sir, we do therefore submit to the Court, that on these points they have produced nothing satisfactory, but what rather makes against them in a Court of justice, and therefore that this Court will look upon it like all the rest of the written documents that have been produced before the Court as completely deficient, in order to found a restitution in this Court; therefore, we say this Court must abide by those legal juridical duties, which are not done away by this evidence, which gives it those chasms, whether after two attempts of further proof the Court will think it proper that they should again go to France, to the public officers there, and that they should call upon General Clarke to supply, where he can, such a vast vacuity of evidence, for that there is still a chasm in the proof beyond any thing that can be brought, or that can be conspicuously made out on the part of General Allen, and that there is not any thing that is proved to be compleated, to the satisfaction of this Court.

DR.

DR. NICHOLL.

SIR,—I am once more to trouble you with some observations on the part of General Allen, the Claimant of that property which is the present cause of enquiry before the Court, and I shall endeavour, with as much brevity as possible, to answer the various objections which have been made by the learned gentlemen on the other side, and which they appeared to rely considerably upon in favor of the Captors, and as tending to militate against that sentence of restitution which we, on our part, hope and pray for from the Court, and we trust, that when the Court have lent their attention to the answers which we have to give to the learned gentlemen, and which we flatter ourselves will be satisfactory, that the weight of justice will incline considerably to our side of the case.

Sir, the great and only material part which we would particularly endeavour to establish before the Court is, that these arms, so claimed by General Allen, were actually designed for the use of the Militia of Vermont, and for no other use whatsoever, and that they are perfectly free from any degree of clandestinity, notwithstanding the many suspicions and improbabilities which have been so very ingeniously, though (as I hope to convince you) groundlessly invented by the learned gentlemen who conduct

his cause on the part of the Captors. Sir, the gentlemen on the other side have found their case so exceedingly weak, that they have thought it necessary to state to the Court very fully, not only the original evidence, but also the extrinsic as well as the further proof. Sir, the gentlemen call this touching on the evidence, if they call these arguments for four or five hours together touching on the evidence, I should be glad to know what they mean by considering the matter at length. Sir, in order to understand the nature of the transaction, and what has been the objections that have been made, we must consider what is the fair result of the proofs laid before the Court. Sir, the transaction is, that General Allen was a person of large property in America, that he had various objects which directed him to this country, especially to cut a canal for the Lake Champlain, others were commercial transactions, and a part of his object was, he being the Major General of the Militia of the State of Vermont, to purchase arms for that Militia, they being badly armed, and he being unable, while in the province, to procure arms for those persons in America, and having made this a part of his conversation for a year before, he came to England to enquire whether he could purchase those arms, and conducting himself without any sort of clandestinity before military gentlemen of the country; for Eyre says, that he thought he should be able to purchase those

those arms on better terms in France, from a superfluity which it is well known at that time was in that country. Sir, accordingly, going to France in 1796, he made a contract with the French Government, he had to export them to America, and he got a vessel, Mr. Thorne furnished it, and being desirous of converting a part of those arms into money, for the purpose of carrying on mercantile transactions, he went to Holland for the purpose of disposing of a part of those arms, and afterwards he went to Ostend, where these arms were shipped, and was going on board the vessel to go to New York, for the purpose of their being applied to the arming of the Militia of Vermont. Now, Sir, if these things are true, if these arms were destined to New York, if they were to be carried to Vermont, no doubt but the transaction was innocent, and he would be entitled to the restitution of his cargo; if these several acts are true, that the property belonging to him was destined to America, and was for the use of the Militia in America, he would be entitled to restitution, and it is only on some suspicion that these arms might be ultimately destined for some hostile purpose, that any ground subsists for any enquiry concerning them; there can be no question of law, it is a mere question of fact, which may be reduced to this single proposition, and any argument which goes to any thing else to prove the ultimate purpose of these arms, is irrelevant to the subject; the ques-

tion may be reduced to this single proposition, were or were not these arms intended for the Militia of Vermont? If that fact is proved to the satisfaction of the Court, we shall submit it is proved to demonstration, that no person can refuse his consent, then restitution ought immediately to take place. Sir, I will consider the proofs in two points of view, those which the gentlemen have relied on, and those which we assert affirmatively, that they were intended for the purpose which we insist on. Sir, to lay the foundation, the gentlemen have called your observation to several extrinsic circumstances;—first, it is stated, that there being a war existing in Europe, and these arms being shipped from one of the belligerent powers, the presumption was, that they were intended for the use of that belligerent State; admitting, however, that notwithstanding they were so shipped, they might be innocently applied, provided it should be proved that they were not hostile to the interest of Great Britain. Sir, it was not contended that it was illegal to ship arms from the ports of a belligerent State, to a neutral country, for innocent purposes. Now, to what instance does this argument go in its fullest force? Why, to this, that it excited presumption, which is to be repelled by evidence; that the Captors have a right to see that there were documents on board, shewing that the property was neutral, that the destination was neutral, and that the purpose was innocent. Sir, it might

might be conceived that there might be proofs on board which would sufficiently shew the innocence of the intention.

Sir, this circumstance, therefore, of there being a war in Europe, and these arms being shipped from a belligerent country, can be proved no further than the examination of the documents, but the Gentlemen state it as a mere supposition hypothetically, suppose, say they, these arms, though the property of General Allen, though destined to New York, yet they were intended afterwards for the purpose of the West India islands, they were intended for Canada. Sir, it is sufficient to answer that by saying, that it is merely supposition, that it is merely hypothetical, because the Gentlemen have not adverted to any one fact whatever in proof before the Court, to shew that there was any such intention in that cargo, but our case does not rest so, it was not in the absence of all proof, there was evidence proving, beyond all doubt, the real purpose for which such arms were intended. Sir, it is admitted that this supposition would be utterly unfounded, and have no sort of weight, if Great Britain had no trans-Atlantic possessions, if there were no such places as Upper and Lower Canada, if there were no feverish irritations in England. Why, Sir, do the Gentlemen mean to assert, that because we have trans-Atlantic possessions, because there are such places as Lower and Upper Canada, and because there have been feverish

feverish irritations in England, do they mean to say that, therefore, these suspicions shall prevail? Do they mean to say to America, You, who are in a state of peace, shall not give forth arms, because there is a contemplation of mere possible effects, though it be for mere military parade, but I again revert to the time when it is proved, beyond all doubt, that these arms were intended really for the military purpose of America, and were not intended for the purpose of acting at all hostilely.

Sir, the Gentlemen resort to other improbabilities in this transaction; first they say, it is unlikely that France should sell these arms, and that it is also unlikely that General Allen should buy them, because France had, at this time, very numerous bodies of men in arms. But, Sir, is it not perfectly notorious that the French have never, during any one moment of this complicated war, been in want of arms, they had 14 or 15,000 men in arms, the number of their enemies was very much reduced, and though they were engaged with Holland and Great Britain, and Prussia in arms against them, yet they were not in want of arms. Is it not known that most of those enemies have dropt off, that they have captured an immense quantity of arms in Italy and Quiberon Bay? Is it not, therefore, a matter highly probable, that the French should have had a quantity of arms? But they say, they did not sell them to America at that time, why so? because there was a degree of adverse

verse opinion on the part of the French against America, they would not allow them that free ships should have free goods, according to their treaty, and say the Gentlemen, because of that it is unlikely that they would have sold arms to an American for the purpose of being carried there: Sir, that was a secret at the time, next, there was no probability that this could produce an absolute breach of the two countries, because they knew how adverse America was to introduce a state of war. What could these few arms do against France if conveyed to America, to Vermont? Besides, would it not have been extremely impolitic in France, having engaged for these arms, to have broken off their intentions, and renew their state of hostility against America? the French perfectly well knew that America could be supplied with abundance of arms from Great Britain, it, therefore, was highly improbable that any thing of this sort should, at the time, have prevented the French from selling this cargo to General Allen.

But, Sir, it is said it was highly improbable that General Allen should deal in arms, he is not a dealer in arms, he is not a locksmith, as the Gentlemen said. Sir, it appears he has a great property in America, and is in a military capacity there, that he declared, over and over again, he never would review this Militia till it was better armed, that attempts were made in America to purchase arms in America without success, that he was coming to Europe for
other

other purposes, and therefore, why not purchase these arms for the purpose of arming the Militia in the State, in respect to which, I suppose, he took a pride, and a very proper pride, that they should appear duly accoutred? But, say the Gentlemen, he should have gone to a neutral State; why so? I apprehend that exactly the reverse would have taken place, for if purchased in a neutral State, in Sweden, in Denmark, it would have increased the suspicion, it would have doubled the suspicion, whereas, by purchasing in one of the belligerent States, at least, he only went under the suspicion of the other belligerent State, therefore, I apprehend it was very natural he should have purchased them either in France or Great Britain. But, Sir, here are facts which is better than argument, here are agents from France purchasing arms in this country, and if the practice is so, it is not improbable that General Allen should have purchased these arms of France.

Sir, it was further said, that it cannot be possible that any individual should have a right, according to law, to import arms to this extent into the country of which he is a member. Now, what improbability? There is no law known in this country to prevent it, and if done to such an extent as to give an alarm to the Executive Government, then they would be authorized, notwithstanding there is no express law, yet they would be authorized to interfere. Sir, if the Government of America, when these

these arms had been imported by General Allen, had apprehended that they were hostile to the Government, they would, by the *salus populi*, the best of all laws, the supreme law, by that very law they would have been justified in interfering; but if it appears to the Court that according to the law of that country, the Militia of each State are bound to provide themselves with arms, what degree of jealousy would it have excited in the Government of America, or why apprehend that that Government would at all interfere in that transaction in which he was engaged? Now, Sir, it is proved to you, by the law of America, that individuals are allowed to purchase arms, that the Militia of each individual State are bound to find their own arms, according to the law of the country, we must advert to the public laws of the country, which do order that every militiaman shall, within six months, provide himself with a good musket, a pouch, a knapsack, and all the rest of it, and I can shew that there is also, by the same Act of Congress, a direction that each company of Militia shall provide themselves with artillery, then the law of America does require that such individual shall provide himself with arms; it is in Graham's Letters on Vermont, where he states the inhabitants are about 20,000, and are all able-bodied men, from sixteen to forty-five, and required to provide themselves with arms. Sir, the whole Militia consists, at least, of 24,000 men, who are to be reviewed, at least, once in two years. Mr. Rufus King

King states no law to prohibit buying arms in the United States, or any restraint whatever, with respect to any individual purchasing arms. Then, Sir, it is proved that it was not contrary to the law of the United States that General Allen should import these arms, on the contrary, by that law every individual militiaman is bound to furnish his own arms, and, consequently, it is rendered highly probable that they must import arms, for the purpose afterwards of sending them out to the individual States. It is now proved to you, Sir, that the Militia does consist of a number of men that would require arms, to this extent, from 20,000 to 24,000, in as much as it appears that the number of individuals in this State has very rapidly increased within the last two years, and has increased, in some degree, since this last report on the subject. Sir, that fact is very strongly proved by the affidavit of Mr. Golbourn, for he states, that he purchased 50,000 military feathers, the Militia, therefore, consists of at least 20,000. However, Sir, it is said, there is something improbable in the mode of conducting these transactions, that General Allen should not have done this without some public authority for that purpose. Now, Sir, we apprehend that no public authority was necessary to do that act which the law of the land did not prohibit, but he had a public authority, he had a certificate from Governor Chittenden, the Governor of the State for whose use these arms were intended, authorizing him, or requesting

questing him, to purchase these arms for the benefit of the State, he certainly did not come over as the agent of the State, he purchased these on his own account, for it does appear that he did come over with this credential. Where is this credential now? Is it not proved to you, Sir, beyond all objection, that he had such a paper, for he states most positively, that he had three certificates, one as to the quantity of land he possessed, another as to the different offices of state he filled from Governor Chittenden, another only stating generally that he was a person of great respectability, and requiring him to purchase arms. Doctor Peters says, in his affidavit, he asked him if he had or had not such an authority, upon which the instrument was immediately produced by General Allen to Doctor Peters, a person of great respectability, who came over into this country for the purpose of being consecrated Bishop of Vermont, and he expressly states, that he saw this paper, in which it was requested that General Allen would buy arms and other instruments of war for the Militia of the State of Vermont, and dated in 1795. Sir, that is collaterally confirmed by Mr. Eyre, who, though he does not exactly recollect the contents of the paper, recollects the paper, and that General Allen did come over to England for that purpose among others.

Sir, it is said, why did not you produce this paper first? In answer to that I submit, that it is
not

not necessary, when you produce evidence of its contents, to produce the paper at the same time, and the reason is assigned, which is, that when this contract was made with the French Government, this paper was produced to them, and they required it should be deposited with them, and the other two certificates General Allen had occasion for, the certificate respecting his lands, and the certificate of his general respectability, in order that he might have these instruments, to enable him to sell those lands, if necessary, but as the object of these arms was over, there was no necessity that he should not leave this with the French Government. Sir, one of the learned Gentlemen has said, that it was a most extraordinary thing that he should leave this with the Government of France, but the other learned Gentleman said, that it was very important for the Government of France to have these papers, so that their arguments were set directly in opposition to each other. Sir, it was asked by the Gentlemen on the other side, why have you not produced these papers? Because we have produced other affidavits from France, the dates of which were before the hearing of this cause, the truth is, that these affidavits were procured to be laid before Government, which would have satisfied them long ago, but for the private Captor.

Sir, there was really no opportunity since the hearing of the cause for obtaining this instrument
from

from France, nor was it probable we could, and we trust the Court will have no further reason whatever longer to delay the hearing of this cause, but that application will undoubtedly be made for that purpose. Sir, we must consider the present state of France and America, that they are little better than in a state of hostilities, or in a state which seems approaching very near to a state of hostilities, and it is not very probable that the French Government would assist a citizen of America, in carrying arms from Great Britain to Europe, at the same time it is possible that nation may have a sufficient sense of justice to give up this paper, but, undoubtedly, it is a matter very problematical, whether at this moment the French Government would do any thing to enable a citizen of America to carry arms from Great Britain to America. Sir, it has been said there was an improbability in General Allen's not making this known to the British Government at this time, and he should have notified it and obtained a licence. Sir, I apprehend an American citizen requires no licence from the British State to import arms to America, that was his request by the law of nations; all that was necessary was, that he should have full documents on board his ship as to the full force and destination of this cargo. Sir, persons who have innocent intentions, have not all their suspicions awake; General Allen had not a learned Civilian at his elbow to anticipate the objections which the ingenuity of the Counsel for the Captors could raise, and if he

had, I believe no Civilian could have conjectured them; on the contrary, would it not have produced a very different sort of effect, would it not have excited the jealousy of France, and totally have prevented the execution of this contract? if he had wished to have avoided the jealousy of France by obtaining a licence of that sort, he might have done it, therefore, Sir, I apprehend it was not natural, or at least it was not necessary, under the circumstances of this case, that there should be any sort of notification, but as to any sort of clandestinity, that he made any concealment of it, it was the matter of his constant conversation in the presence of military officers and others, to whom he made no sort of secret of it, it was his constant talk. Sir, there is a doubt as to the manner in which this property is to be paid for, it was part down, and the remainder in seven years. Sir, it really is a great refinement or argument which the gentlemen on the other side had recourse to, that because the Nabob of Arcot could not maintain a suit in England against the East India Company, in the Court of Chancery, that therefore the Court of France could not receive the mortgage of the lands of an individual belonging to America, because a State could not institute a suit and proceed against that individual; I really, Sir, do answer an argument of that sort merely out of respect to the gentlemen who urged them, for that ever that should enter into the head of a State cannot possibly be imagined, for in a contract; where
there

there was part only to be paid down, would not this contract have professed that the whole money was not paid for these arms? but if it had been intended only for a colour and a cover, it would have been attended in that case with an express declaration, that the whole of the money had been actually paid.

Sir, these are the circumstances of suspicion that the gentlemen have relied on, which, so far from being all well founded, I submit that they really have no foundation in fair reasoning, and they are positively contradicted by clear facts, and by proofs laid before the Court: on the other hand, can there be any thing more improbable than that the French Government should at this time be sending arms in this manner, for purposes hostile to this country, that they should, in an unarmed vessel, send through Ostend arms from France to America, or to Ireland, on their own account, is that the mode in which it would have been done?—first, would not they have sent them from out of the Atlantic ports of France, would not they have sent them on board some armed vessel, would not they have sent them on board one of their frigates, or on board one of their ships of the line, for they had such of both sorts, although they had not a sufficient convoy at this time to face the British fleet, yet a very short time after they were able to send a considerable fleet out to sea, and had then many frigates cruising from the port of Brest, and from the port of Bordeaux, or some of the

Atlantic ports on the part of France ; as to their being put on board a neutral ship, that was no protection for them as the event has proved, though there was no sort of concealment, therefore it is highly improbable, I apprehend, they should have shipped them in a manner in which they were sure to be intercepted ; but, however, supposing the gentlemen are well founded in these sort of hypothetical improbabilities which they have set up, what would it come to? only to shew what does appear defective in the evidence on board the vessel. Sir, it is admitted that all the documents prove the property, that they prove the destination, and the only way in which they have attempted to get rid of the effect of that evidence is, by saying that if this was a false transaction, why the paper would be ostensible. Why, Sir, to be sure that is a compleat and satisfactory way of getting rid of all evidence whatever, it is cutting up by the roots, but you must shew by facts that the transaction is unfair, before you are at liberty to assert that the papers were merely ostensible.

Sir, with respect to the charter-party, how does that infer that these arms were not destined for the Militia of Vermont, because would General Allen at this time have communicated it to the master, who appears to have had some degree of alarm on account of the quality of the cargo, is there to be found any concealment of the cargo, as to the quality of the cargo? the other objection was, that there was
a suf-

a suspicion among some of the lower persons of the crew, that this cargo was to go to the East Indies, but on what foundation, was there any declaration, any fact or circumstance, inconsistent with that which we profess to be really the case? Sir, these are the circumstances which have been relied on, as warranting not only the original seizure, but the objection to the further proofs, as to the insufficiency of those further proofs.

Now, Sir, let me just observe what these proofs are, and whether they do not call beyond all doubt for your attention, first you have the contract, you have the charter-party, you have the letter from General Allen sent over to Vermont, for the purpose of being inserted as an advertisement, calling on the officers of Vermont to send in the returns of the arms they should want, in short you have full proof by the papers themselves, that these goods were to be carried by General Allen to Vermont, for the use of the Militia. Sir, the place of capture, whether it was 60 or 70 leagues west of Scilly, or whether it was as admitted by some of the witnesses, they were upon the course for New York, they were out of the course for Ireland and France, and therefore nothing but the quality of the cargo could have induced the seizure; and nothing else could have inclined the Court to comply with the demands of the Captors for further proof; and nothing could have induced the Captors to object to these further proofs, unless,

indeed, that which I have already suggested as the impression of the persons interested in this cause is taken to be the reason, that the private parties are in hopes to get this property condemned, and that they shall have the benefit of the sale and commission of it. Now then, Sir, the nature of the further proof by the Court is, to shew this was intended for an innocent purpose; now, I apprehend, this Court will require nothing more than that they were intended for the Militia of Vermont, and that the purpose was innocent, if so, we have done that which the Court have required of us. Sir, in what possible way can the intention be shewn, as to the purpose for which these arms were to be applied, but by the uniform current of the conversations and declarations of this gentleman, at a period long antecedent to the transaction, but it is said, the course of it ought to be during the transaction, to shew a consistence with that intention on the one side, and an inconsistency with any other purpose on the other side. Sir, our further proof does, as we submit to the Court, establish to demonstration that the arming of the Militia of Vermont was the purpose for which these arms were to be applied. I assert, Sir, that besides the affidavit of General Allen, (and, if credit had been given to his affidavit, undoubtedly no further proof would be necessary,) I am sorry that the necessity on the other side has driven the Captors to contend that the affidavit of General Allen was not sufficient; however, there are the attestations of ten persons
made

made at different periods of time, and going to different periods of the transaction, first as to what passed in America, long before the transaction is undertaken, secondly, as to what passed in England, and thirdly, as to what passed in France. Now, Sir, in the affidavit of Colonel Graham, you have the account that in the month of December, 1795, he was at Boston, in company with General Allen and General Stoddart, and General Hartwell, all of the State of Vermont, and heard them then conversing on the state of the Militia, and General Allen's going a tour to Europe, he declared he should, during his absence, endeavour to get arms for the State of Vermont, and heard him state, that he never would review the Militia till they were sufficiently armed, and says, that the officers of Vermont were desirous to arm the Militia, but were not able to procure arms for that purpose; now what does this evidence prove, but that they wanted arms, that General Allen wanted to procure arms for them, publicly declared that wish, stated that he was going a tour to Europe, and should attempt to carry that intention into effect. Sir, this is confirmed by Mr. West, who mentions, that in the year 1795, he heard declarations to a similar effect, and says, that in the year 1794, he was requested, by the Governor and gentlemen, to purchase arms for Vermont, but could not procure them; these declarations then, and this conduct, are perfectly consistent with the application of arms for the purpose to which we suggested it, and I submit it is perfectly

inconsistent with the idea of their being intended for any hostile purpose whatever, for if so, would it not have been carried into effect? Sir, having had such a transaction on his mind, when he comes to England he dines with Dr. Peters, he communicates his object to him, as a subject of a secondary nature, for the obtaining a canal, and opening a mercantile correspondence, were undoubtedly his primary motives, and he is told he can purchase these arms more conveniently in France. Sir, it is no small confirmation of this, what is stated in the affidavit of the feather-merchant, that when he was in England at this time, he applied to him, and contracts with him, for the purpose of procuring military feathers, he orders 50,000, and he orders patterns of others may be sent to America for the officers to determine on: Says Dr. Lawrence, why he purchases the whole of the arms, but he does not purchase all the feathers, the reason was obvious, there was no reason to send the pattern of a musket to America, and, in all probability, the feathers were given by the officers to the men; that patterns of other feathers, for other divisions, were sent to America, in order to please the ambition or the choice of the persons who were to supply them. Sir, this circumstance does in the strongest degree confirm that the arms were for the same purpose, he was desirous they should be sufficiently armed, that he would not review them till they were purchased, for that particular purpose. Sir, in consequence as I have stated of the superfluity

fluity of arms, which at that time existed in France, General Allen went over thither, and entered into a contract there. Now, Sir, what is the evidence which you have on this subject? There is the affidavit of Mr. Thorne, that on Mr. Allen's arrival he communicated his intention of purchasing arms, that in the year 1794, he heard Mr. Allen say he never would review this Militia again until they were furnished with arms; he says Mr. Allen shewed him a request from the Governor to buy arms in the year 1795, (and that confirms the evidence of Dr. Peters) that he had compleated this contract, and it is by no means immaterial to observe, that he gave Dr. Peters a letter to be forwarded to America, advertising to the officers that he had purchased those arms, and directing them to choose the colours, that he was able to procure a vessel in France, that Mr. Thorne was employed to get a vessel in England, and that he verily believes those arms were for the Militia of Vermont. Sir, there is an affidavit of Mr. Jesse Foot, confirming this, that mentions a circumstance extremely strong, for he says he was applied to by General Allen to be the agent for shipping these arms, to go to Ostend to act as his agent under a power of attorney, to carry into execution this contract, and that it was merely because his personal presence was necessary at Ostend, that he refused that agency, and that he had not the most distant reason to apprehend that these arms were to be applied to any other purpose. Mr. Knapp also
makes

makes an affidavit, the particulars of which I shall not state to the Court, but there is another circumstance still more strong, because it is a circumstance I think, establishing the intention beyond all controversy, that is what is stated by Mr. Layton Smith, in his affidavit, he is a gentleman on his medical pursuits, just arrived in London on his journey to Scotland, he says before he came from America he saw in the newspaper this very advertisement. Sir, if that is insufficient, what can convince any mind of the purpose for which these arms were intended?

Sir, on Mr. Allen's proofs then can the Court have a doubt of the intention? the Captors say produce us this original certificate from Governor Chittenden, to that we have already answered, though we have produced direct and positive proofs of its existence, not only from General Allen himself, but also from two or three other persons, to whom it was produced, who read its contents, and who knew that General Allen had such an instrument; besides if the production of it is procured, what will it prove stronger than what is already proved? why, supposing the hypothesis of the Gentlemen on the other side to be well founded, that there was some hostile intention in the mind of General Allen had existed two or three years before, because he conversed on it two or three years before, if so, he would have obtained such a certificate from Governor Chittenden; the ultimate intention we submit is proved beyond all controversy

troverſy by other evidence, but that inſtrument being produced could not furniſh further proof, on what reaſonable grounds then can the Gentlemen call for the production of it? Sir, I have already ſtated in ſome degree the improbability from the preſent ſituation of France and America, that the government of France would aſſiſt an individual of America in procuring the exportation of arms from Great Britain to America. It is ſaid alſo, produce us your correſpondence with the French Government, bring this communication: General Allen ſays he had little or no communication, it was principally conducted by General Clarke; then ſay they, produce us his affidavit; Sir, I believe this is the firſt time the evidence of enemies is required in proof of neutrality; if the affidavit of General Clarke had been attempted to be laid before the Court in this caſe, I preſume, from other inſtances, that the reading of that affidavit would have been objected to, and that it would have been rejected by the Court; here therefore is no ſort of defect in the proof which is now laid before the Court: Sir, however I have ſtated already and I ſtate it again, that if the Court can conſcientiouſly ſay here is not ſufficient proof at preſent, if the Court can conſcientiouſly ſay that the demand of the Captors to go to France and to attempt to obtain the certificate from the French Government is reaſonable, that that attempt ſhall be put in practice as far as poſſible by General Allen; but we ſubmit that there is ſuch a body of evidence before the Court,

Court, together with all those original documents, the uniform course of declarations and conduct of General Allen in America, from the circumstance of the Militia of Vermont being in want of those arms, and their not being to be procured in America, together with the circumstance of General Allen's having declared two years before he came into England, that he would never again review this Militia until they were properly armed, and that a part of General Allen's object in his tour to Europe was in order to procure those arms, when it appears that as soon as he arrived in this country he made his enquiry respecting the purchase of arms here, and that he found he could purchase them better in France, and all these circumstances together confirmed by General Allen's positive testimony, and by all the collateral circumstances, I think it is impossible that the Captors should contend, and that the Court can pronounce that the whole course and colour of the transaction is fraudulent, and that the depositions taken before you, Sir, are all mere perjury on that subject: Sir, if the Captors, from mere interest, should wish to stop the restitution of this property, I apprehend the Court will believe that the situation of things is extremely changed since the original seizure of the Cargo in question, if the then existing circumstances were such as to warrant the stopping and seizing this property at all possible risks, public events do now render it highly desirable that this property should be permitted to go to its port of destination; France
and

and America, it is now well known, are now in such a doubtful state, if not in a state of actual hostility, that the greatest kindness this Court could do to France, and the greatest unkindness the Court could do to America, would be to refuse the restitution of this property to General Allen.

Sir, I apprehend General Allen will not go away from this country, any way impressed against the Government of this country, inasmuch as I trust he is convinced that whatever obstructions to the restitution of his property have arisen, he owes it entirely to the Captors themselves. Sir, whether the Captors are acting with good policy, whether they are acting with patriotism, either towards this country or towards America, in preventing those arms from going there, or to excite disaffection in any of the Citizens towards America, and more especially to a person of that respectability and weight which General Allen appears to have, is a fact for their consideration; it appears to us of no slight importance to General Allen that he has the assistance and countenance of the Minister of his country in obtaining that restitution, and it cannot be in any degree supposed that that Minister at this time has any impression that there was any hostile intention, and the Court will be on its guard how it permits the private Captors or their agents, in order to protect themselves from loss, to get the party into a compromise for any secret purposes at such a period as the present, to prevent the carrying this property

property to the port for which it was destined, and to render dissatisfied any citizen of that country, the concurrence of whom being at this period most highly desirable. Sir, it does appear that General Allen came from America not for the purpose of procuring these arms, but for the purpose of opening a very extensive mercantile connection, of property to the amount of 10,000l. annually, in consequence of a canal in which he was engaged, though he was defeated in that view at least for the present, for it was only adjourned for the present, yet he is engaged in very large mercantile concerns for one individual only, and therefore it was very improper that such a person should be detained here, where there is no reason to apprehend that he has any view hostile to the interest of Great Britain, but that he was engaged in concerns highly beneficial to it.

Sir, I must submit to you that the proof is before you more compleat and full, and yet that it is only confirmatory of what did originally appear, and that however the Captor might be justified in his own country in seizing this property, yet I submit he seized it at his own risk and peril, if there was proof sufficient of the legality of the cargo, but if notwithstanding he chose to risk that seizure under the chance that it would ultimately appear to be not equal to its destination by the papers of the ship, and upon the chance that the papers would not turn out satisfactory, he must abide the consequences. Sir, I submit to you

you upon the whole of the case, that the suspicions of the Gentlemen on the other side are not founded, that the purpose of General Allen was in no degree hostile, but on the contrary that it was perfectly innocent, that the intention of those transactions appeared to be so originally, and that they are now fully confirmed. Sir, I submit to the serious consideration of the Court, whether it would not decide short of justice, in giving mere restitution, without giving any compensation for the loss occasioned by the detention of the property in question?

DR. ARNOLD.

SIR—THE great and material point which we have to establish in this Cause, on the part of the Claimant, is, that these goods were really, in their final destination and design, intended for the use of the Militia of Vermont. Sir, on the part of the Captors, you have heard objections raised to every part of the case, and you have heard evidence produced in answer to those objections. Sir, we have heard suppositions and probabilities stated with great ingenuity, and urged with full force, but we state here what must be considered as full proof, and what must entirely satisfy the mind of every reasonable man, as, undoubtedly, it is the best answer that can be given to the doubts, suspicions, and improbabilities arising in the cause.

Sir,

Sir, much was said to you on the nature of this cargo, as if it was not to be considered as any other indifferent cargo; undoubtedly we do not contend that it is a cargo under any peculiar circumstances, it is of a peculiar, of a nature, which, under some circumstances, might be highly contraband, it is a cargo of such a nature which would lead the cruizer of a belligerent State to enquire into the destination of that cargo; that is the great point, on that must depend the nature and character of the cargo, whether contraband or otherwise, but there being satisfactory proof on board that the cargo was really to a neutral country, then we say that the cargo did stand in the situation of any other neutral cargo, that it was in circumstances in which it could not be contraband, that it was in circumstances in which the character of contraband could not attach upon it, and this cargo, under the same consideration, was equally innocent with any other cargo. Sir, we contend that there was on board this vessel various papers, which were found on board, and which furnish full and complete proof of its destination. Sir, the Gentlemen find themselves considerably pressed by the complete evidence of destination which the papers contained, they resorted, therefore, to an objection of this kind of argument, that supposing a belligerent power to be sending arms for an hostile intention on board a ship, the papers on board that ship would be hostile, and would hold out a destination to such port to which it was going. Sir, this argument

ment went directly to require the Court to presume fraud, a presumption which this Court and no Court of Justice ever does entertain; no Court ever presumed fraud in the first instance, but here the fraud is to be presumed before there is any ground for such presumption, but, Sir, the utmost length of this argument would be, that some suspicions were thrown on this cargo, and those suspicions may be removed by further evidence, and if that evidence still retained any circumstances of suspicion, as to the credit attached to it, yet if it was corroborated by other circumstances, and which did fully corroborate that evidence, that would render it deserving of full faith and credit. Sir, the ship was found exactly in the course which she must have pursued in order to go to that place which the papers described her as being destined to. Sir, there was another circumstance which likewise afforded as strong a confirmation as possibly could be given, that these papers were not ship papers, but letters directed to New York on certain mercantile concerns. It cannot be suggested, for a moment, that letters such as these, to the amount of fifty, which were in the common and ordinary course of mercantile correspondence, giving an account of the price of goods, and the ports from which they were written, and other ordinary mercantile transactions, should not be satisfactory. Sir, these two circumstances do, therefore, in the fullest manner possible, corroborate the testimony of the ship's papers, beyond all possibility of doubt; indeed,

Y

deed, the Gentlemen have, in a very considerable degree, conceded this point to us; but then they have said a further objection arises, which is, that if destined to New York, still if they had an ulterior destination after their arrival there, which was inimical to this country, in that case the character of contraband would attach to those goods. Now, with respect to an argument on that doctrine, we say, that no such fact appears before the Court, it is not in any degree proved, nor is suspicion shewn in such a manner as to attach, in any way whatever, to the present instance. Sir, there is no ground whatever for this suspicion which has been loosely thrown out, there is no ground whatever from any papers on board, or from any part of the evidence produced before you, on which to build this suspicion; there is, indeed, one of the mariners who says, that some suspicion was entertained that these goods might be designed to be sent to the French West Indies, but is there any ground for that suspicion? Is there any ground for that suspicion from the view of any of the papers themselves? Is there any evidence of any conversation on which such a suspicion could be rested? It is a mere loose suspicion, taken up by themselves, without any circumstances, either of fact or conversation, or declaration, which does, in any degree, give countenance to it; and another suggestion is, that these arms might possibly be intended for some purpose hostile to this country in Canada. Sir, even this is a mere suggestion of Counsel, and there

there is not a tittle in the papers, in fact, or in conversation, that can give any foundation to it. These suggestions, therefore, rest on no foundation whatever, there is not a tittle of evidence to support them, or to give a foundation either to one or the other, but they are fully and clearly contradicted by all the evidence found on board the ship, and by all the evidence which has been added since, not even by that mass of evidence which has been added since to corroborate that evidence which was there found.

Sir, many arguments, likewise, have been raised on the contract, which we state to have been entered into by the French Governor, for the purchase of these arms, and it is said, that there is a high degree of improbability that attached to this transaction, on many accounts, and in many parts of it, and the time of the transaction has been particularly called to your notice, at a time when the French were acting in an hostile manner towards America, at a time when they were breaking their treaty with that country, and, therefore, it is not a time when they would be supplying her, or any part of that country, with arms.

Sir, the French undoubtedly did, at this time, pay a very slight regard to the treaty which they had entered into with America, they did enter into measures which did tend to break that contract, but

they had no intention to go to war with America, and they had no intention that this should lead to hostilities, she apprehended no danger to herself in permitting these arms to be sent to the State of Vermont, nor was France, in permitting this transaction to take place, conferring any benefit on America, they were merely taking all the benefit to themselves, in selling this property which they knew not how to dispose of, they were not conferring any favor on America, but considering their own advantage, and their own advantage solely. Sir, the mode of this transaction has been considered very much at length, it has been said that such transactions never were carried on without written documents, if there are written documents, let them be produced, in order to verify the truth of the transaction. Sir, you have now produced before you the affidavit of General Allen, stating that this transaction was carried on chiefly by general conversation, by verbal conversation, under the interpretation of General Clarke, meaning thereby, that all the most general parts were conducted in that manner, and asserting, most positively, that he has no written document in his own possession which he can produce, then they say, let the affidavit of General Clarke be produced: If such an affidavit had been offered to the Court, undoubtedly it would have been objected to by the Counsel on the other side, and rejected by the Court, or else the Counsel and the Court would not have acted with uniformity in their

their conduct. What has been done on former occasions? It has always been, as I understand, that evidence from an alien enemy cannot be received.

Sir, it has been said, that the French Government would not have received such a security as is here said to have been given for the goods in question, that it was the constant practice of all Governments to require the security of some merchant resident in their own territories, and connected with the countries where such goods were sent, for the payment of such goods as were exported. Sir, in the situation of the present Government of France, for the conduct of that country, I conceive it would have been extremely difficult to find any person who could have given that security which is thus asked, for a considerable part of the purchase money was actually paid down, to the amount of 7 or £8000, the Government of France appear to have been scrupulous with respect to the security for the remainder of that payment, they appear to have made enquiries into the responsibility of the person making this contract with them, they ask for certificates to be produced to them with respect to his character and property, and these certificates actually, as he informs you, were produced, certificates shewing his character and respectability in his own country, with respect to his property in that country, and the part which the deponent took in the transaction in which he was then engaged in with the Government

of France, they had, therefore, a part of the money actually paid down to them at the time of signing the contract, they had likewise satisfaction given them that the person who entered into the contract with them was, from his property and from his character, a person in whom they might well confide, for the performance of the remainder of that contract, and for the payment of the remainder of the money, and upon what ground is it to be said that the Government of France had not a lieu to enforce that on the property of General Allen, or that the Government of America could not assist them in enforcing that lieu, if it should be good so to do, but if the contract had been such as the Gentlemen on the outset attempted to impress the Court, but if this was actually a fraudulent contract, then no such difficulty would have appeared on the face of it, there is no ground for putting these objections, there is no need of further stipulations for the payment of this money, there is no necessity for any further security on the landed property of Mr. Allen for the payment of this money, I mean, for the payment of the remainder of this price; undoubtedly, if the transaction was fraudulent, the price which had been set upon it would have been fair and colourable, and admitted of no objection, you would have found an actual acknowledgement of a payment having been made at the time, therefore the very circumstance upon which the Gentlemen have founded the objection which they have raised, does,

does, of itself, tend to shew, in the highest manner, the truth and the reality of the contract on the face of which it appears.

But, Sir, in proceeding to consider of the evidence which has been laid before you, as to the truth of the history of the transaction, which is asserted on the part of the Claimant, and the proof of the reality of that transaction, which, as we contend, is clearly proved before you by evidence, as the best answer to all objections of suspicion, and to all objections of improbability in this case. Sir, the law of America, with respect to removing this objection, does not seem now to be disputed by the Gentlemen on the other side, and, indeed, it would be strange it should, after the satisfaction the Court has had on the subject, and you find it is the duty of every individual citizen, and not the duty of the State, to provide themselves with arms, they are bound by law so to provide themselves; thus, then, undoubtedly the law is open to individuals to procure a supply of those arms for themselves and for their fellow citizens; it is not the duty of that State to procure that supply. Sir, it is said, that although it may be lawful for individuals to procure their own arms, and although it may be their duty so to do, yet the law of no country whatever can permit individuals to introduce into that country a magazine of arms, can it be said (say they) that in America, or any other country, it can be lawful

for a man to introduce into his house magazines of arms, or to turn his garden into a park of artillery? The Gentlemen allowed, indeed, that there might be circumstances in which an individual would not be liable to any suspicion whatever, for instance, if a man was a gunsmith or a dealer in arms, no suspicion would attach upon him on that account. Sir, if a consideration of this kind is submitted to the consideration of the Court, I would humbly submit, in such case, that the Court should also take into consideration the situation of the State of Vermont at this time, it is a State which undoubtedly is daily increasing in strength and power, in every respect, but which is not yet arrived at maturity, and in all countries which are in an infant or in a progressive state, the different occupations of society are not performed with that exactness, or with any degree of that exactness, in which they are divided and parcelled out by other countries which are arrived at any degree of perfection, the reason is, there must be landholders, and they must be concerned in military pursuits and defences as far as their country requires; if there have been military transactions carried on, they must be by the same persons; the argument, therefore, however it might hold with respect to a country in a state of maturity and perfection, does not at all hold with respect to a country in a totally different state, and which has been, and now is, merely in a progressive situation of improvement. Now, Sir, what suspi-
cion

cion
 a qua
 conse
 instan
 exten
 of hi
 many
 self p
 coun
 in it.
 more
 they
 chara
 com
 those
 there
 in th
 trod
 supp
 his p
 the
 prop
 of t
 is le
 requ
 selve
 foun
 a tra

cion can be stated to arise from the importation of a quantity of arms by a person of character and of consequence in his own country? In the present instance, here is a gentleman of very large and extensive landed property in that country, a man of high character and respectability, who had filled many important offices in that country, a man himself particularly connected with the Militia in that country, by holding a very considerable command in it. Sir, it does appear, that no person could be more proper to negotiate for a supply of the arms they wanted, than a man of great property, of high character in the country, and holding a very high command in the corps, for the supply of which those arms were required; no suspicion whatever, therefore, could attach in the State of Vermont, or in the country of America, on this gentleman's introducing a quantity of arms for the purpose of supplying the Militia of that State, his character and his particular connection with the military force of the country, do point him out as being the most proper person of all others to engage in a transaction of that nature in a country in which that transaction is left open to the individuals of that country, by requiring the individuals to provide arms for themselves. Sir, in such a country, no person could be found who would be more free from suspicion in a transaction of this kind,

Sir,

Sir, the population of this country does not seem now to be disputed, as sufficient for the numbers of the military forces, and from evidence which has been laid before the Court, it does appear, that the Militia of that country at present does consist of between 20 and 30,000, but it is said to be improbable that all these persons should be without arms, but in answer to that it may be said, that if they are not all without arms, still they may all be ill armed, they may be very deficient in arms of an effective nature. Sir, that there was a want of arms among them is proved beyond all possible contradiction. Sir, it is proved by persons who have been actually on the spot, who have been resident in the country, it has been proved by Mr. Thorne, who describes himself as going to reside in this State of Vermont. Sir, it is also proved by Mr. Graham, who himself was an officer in the Militia of this State, and they both concur in what is asserted by General Allen, that there was a great deficiency in the arming of these troops, and Mr. Graham likewise tells you that the officers were desirous to supply this deficiency, and you find by the other Mr. Graham, that he had endeavoured to supply them himself, at a former period, but that his endeavours were not attended with success; this fact, therefore, cannot be disputed, that there was a deficiency, and a great deficiency of arms in this fort. Sir, you have likewise the declarations of General Allen, that he would not review the

the
Sir,
kind
view
a de
Gen
with
that
unde
med
this
those
arose
view
of a
Sir,
and
Sir,
defic
cers,
the
Euro
and
his o
have
good
which
mont
purp
from

the Militia of Vermont until they were better armed. Sir, Mr. Thorne speaks to a declaration of this kind, which he heard General Allen make in a review of the Militia before. Mr. Graham speaks to a declaration to the same purpose, which he heard General Allen make in America, I think in company with several officers there. Now, Sir, can it be said that these declarations, made at such a period, and under such circumstances, are not declarations immediately applying to the particular circumstances of this case, and that they were made with no view to those circumstances from which they immediately arose, and to which they directly applied, but with a view to some future intention of a fraudulent supply of arms to be carried to the enemies of this country. Sir, it is a suggestion which exceeds all the limits, and all the bounds of probability; you find then here, Sir, that here were a great number of men that were deficient in their arms, which was felt by their officers, and particularly by General Allen. Sir, in the year 1795, General Allen took a journey to Europe on different purposes of great consequence and importance, which are stated to the Court in his own affidavit, and in the other affidavits which have been laid before you, he considered this as a good opportunity of procuring that supply of arms, which had been long wanted for the State of Vermont, and you find that he made declarations to this purpose before he left America, during his passage from America to Europe, and during his residence
in

in this country and in France. Sir, it has been suggested that if his intentions were such as were imputed to him by the Gentlemen on the other side, that yet these declarations might have been made, but Sir, on that head we only say they are circumstances which strongly corroborate all the other evidence which you have in the cause, and that they receive credit from all the other parts of the evidence, and are in perfect consistency with it. It is a circumstance of considerable importance when you find the declarations of the party on the subject to be consistent and uniform, and to be in all respects and in all points the same, and when you find those declarations likewise to be in perfect consistency with all his actions, and with every other part of the evidence that is to be laid before you, I say when considered in conjunction with the rest of the evidence, this is a circumstance of very great importance and weight.

Sir, I submit that the declarations of General Allen as to the purpose for which he intended these arms, are found to be at all times uniform and consistent, and agreeing perfectly with the whole of his actions, on the whole of his conduct; but Sir, this likewise proves that there was nothing clandestine, no desire or wish of concealment in this transaction; you find from this circumstance that it was the general tenor of his conversation in all companies into which he went, it was the general tenor of the declarations which he made, before all the persons with whom he conversed,

it

it was a matter therefore he did not in any degree wish to conceal or to hide from view. Sir, the Gentlemen have allowed that this has a degree and kind of publicity, but they have said this is not all that was necessary in a case of this nature, here should have been a declaration to the English Government, they should have been made acquainted with the intentions of General Allen and his conduct. Sir, it was not necessary for General Allen as an American subject to get a passport or licence to import a cargo of this nature or of any other from France to America, it was a circumstance which would undoubtedly have thrown suspicion and obstruction in his way, in conducting the business in France, if he had made that communication, or had procured any such licence from the English Government, it would have raised suspicion in the French Government, and made them unwilling to treat with him for the purchase of those arms, and suspicion would undoubtedly have fallen from the circumstance of his communicating this to the English Government, that there were some underhand dealings between him and the English Government with respect to the transaction. Sir, it is a communication therefore which he could not have made with safety to the success of the transaction which he was carrying on. Sir, his conformity to these intentions appears by his subsequent conduct; when he came to England he made enquiry in order to procure this supply of arms, you find that he made enquiries of this kind in this country; Sir, here his enquiries

enquiries were stopped at once, for he was told both that difficulties would arise with respect to his obtaining the exportation of arms from this country, and that in all probability he would not obtain the arms on the same advantageous terms on which he could buy them in France, and if he had bought them in this country he must have bought them of manufacturers, but in France he might be supplied by Government, it being notorious that the Government of France were in possession of a quantity of arms which they had taken from their enemies, and which they would dispose of on lower terms than they could otherwise supply them : Sir, his contract therefore was stopped here and carried on at France on two considerations, first, the difficulty of obtaining a passport from this country, and next, the cheapness of the article, from hence, therefore, he went to France and there he pursued his enquiries with respect to the articles he wanted, and he found that every information or suggestion that was given him was actually true. Sir, you find affidavits from different persons with whom he conversed in France at this time, you find it stated by these affidavits that he has declared to Mr. Thorne and also to Mr. Cotterell, that he was about to make such contract in the month of June with the French Government, and you find also that afterwards in the month of July that this contract had actually been made.

Sir,

Sir, Mr. Thorne has told you, that he informed him he had applied to Mr. Putman to act as his agent, in seeing those arms shipped on board different vessels, in order for their conveyance to New York.—You find Mr. Putman fully confirming this account, that he was applied to by General Allen for this purpose, that he had actually engaged for it, but declined it because he found his personal attendance would be necessary at Ostend, which would be inconvenient to him on account of other business, in which he was personally engaged.—Sir, you find Mr. Thorne states that he afterwards applied to him to charter a vessel to convey these arms in a vessel to New York; that he did actually charter this vessel which had been taken for that purpose, and this is confirmed by another witness.

Sir, in this evidence therefore you have a very clear and consistent history of the whole transaction; you have it laid before you that there was a deficiency of arms amongst the Militia of this Country, that General Allen had all along entertained an idea of procuring a supply of arms for them, that he had constantly declared this to be his purpose on his coming to Europe, and you have likewise a clear account of all the steps he took, of all the enquiries he made, and of all the contracts he entered into for such a supply.

Sir,

Sir, it is likewise clearly proved before you, that General Allen, though he undertook this transaction on his own private account, and on his own private risk to bring goods on his own account, and intending to dispose of them among the Militia of Vermont, upon his own account and to his own advantage, yet that he did not enter on this transaction without the knowledge and concurrence and approbation, and even the request of the Government of his own province of Vermont, that he entered into the transaction as an individual and upon his own individual account, yet he did not enter into it as an unauthorised individual, for he states to you that he undertook it at the request of the Governor, and that he had a certificate from the Governor in which that request is very distinctly stated.—Sir, it has been said on the other side, if such a document did exist let it be produced, the Court has a full and satisfactory account of that document, and of the way in which it has passed out of the possession of General Allen, he had these certificates from the Governor of his state, one of which has been produced before this Court, and the other in which this request is particularly contained. Sir, you have a certificate and his general character and situation in his own country, also a certificate which therefore would be of use to him in all countries to which he went, and upon all occasions, and in all business and transactions in which he might be engaged in those different countries; the
other

other certificate applied particularly to this business of procuring arms for the Militia of his country ; he tells you that when he entered into the contract for these arms with the French Government, they required that both those certificates should be produced and should be left with them, he resisted the leaving the one of these certificates, but he did not resist the leaving of the other.

Sir, this conduct appears to have been perfectly natural and perfectly proper, the general certificate which would be of use to him in all other places, and upon all other occasions, the particular certificate applied merely to that particular transaction in which he was engaged with the French Government, and which therefore he would consider as of no further use when that transaction was once fully completed. Sir, it has been said that it would be of no use scarcely even to produce it, but certainly not to have it left in the hands of the French Government, to this however an answer has been given by one of the Gentlemen on the other side, and he has stated to the Court very strong grounds which made it necessary for the French Ministers to require that the documents should be left with them as a strong justification of their own conduct to their own Government, when they should come to make up their accounts with their own Government. Sir, the conduct of General Allen therefore with respect to these different certificates, appears to have been perfectly na-

tural and perfectly proper : he required to retain, and actually did retain that general certificate which might be of use on all other occasions, but he suffered the French Minister to retain that document which might be of use to him in his accounts to his own Government, but which he conceived would be of no further use to him after he had compleated that transaction, for, as an innocent man, he undoubtedly could not foresee those insinuations and suspicions which have been raised by Counsel on the part of the Captors, and having no suspicions, he could not act like a suspicious man on that occasion. Sir, that such a certificate did actually exist, the Court has all the satisfaction that can possibly be given, you have the attestation of General Allen himself that he was in the possession of this document, you have the affidavits of several persons to whom he has shewn this document before he had delivered it up, you have also the attestation of the Rev. Dr. Peters, Mr. Thorne, and Mr. Eyre with respect to this circumstance ; Dr. Peters says, that upon General Allen's mentioning to him the existence of such a certificate; he asked for a sight of it, and that it was immediately produced to him, he speaks particularly to the contents of that certificate, and describes it to have contained a request to General Allen to procure arms for the supply of the militia of the country : Mr. Thorne likewise tells you the certificate was produced to him by General Allen, and he gives a description of its contents, the Court therefore has full evidence that such certificate was in the possession

possession of General Allen by those persons to whom it was exhibited, and who are able to speak particularly to the contents of that paper; then Sir, the Court has, as I conceive, all the satisfaction which it possibly could have if this paper was actually produced before it; you have it proved that such a paper did exist, you have the contents clearly and particularly described to you by persons who had seen it.—Sir, that certificate tends as strongly as any thing possibly can tend to verify the truth of the history which is given on the part of General Allen in this transaction, to shew that he entered into it with the view with which he states himself to have entered into it: that there did exist a desire in the Government of the country to supply a deficiency of the arms to the Militia of Vermont, and that he was a person who was authorised as an agent from the state to undertake that supply.

Sir, there is another document which was found on board this ship, and which is further verified if it stood in need of any further verification, by the evidence which has been produced before you, which does tend very strongly to the same point, and that is the advertisement which was sent by Mr. Allen after the purchase of these arms, to the printers in America, stating the particulars of the transaction. Sir, this is a document upon which undoubtedly we did lay a considerable stress in the former argument, the Gentlemen on the other side, in order to get rid

of the force which undoubtedly is attached to this document, did suggest that if the case was fraudulent, if these arms were intended to be sent through Vermont to Canada, such an advertisement as this might still have been published in this paper. Sir, if the Court considers the contents of that document it will appear to you absolutely impossible that this could have been the case, it was sent to Governor Chittenden himself, it was sent to America with intention to be published in the news-papers in the State of Vermont, and this expressly on the face of it declares the request which was made by Governor Chittenden to General Allen; if these papers therefore were fraudulent the Court must presume Governor Chittenden as an accomplice in the fraud, and involve General Allen with him in a direct and palpable fraud, for it declares this request to be made by the Governor to General Allen; but Sir, it goes further, and it calls on the officers of the State of Vermont to take active measures and procure returns of the deficiency of arms in their corps, in order that General Allen might know how particularly to distribute those arms after their arrival in America; can it then, with any degree of probability be suggested for a moment that this document was attended with any fraudulent design to cover any given purpose of supplying Canada, when here is not only a public declaration of the purpose, but it does likewise call upon them to take an active measure in order to facilitate the distribution of those arms among them. Sir, you have then this
further

further proof of the history which is given of this transaction on the part of Mr. Allen, and you have in this paper likewise full proof, as I conceive, that he did undertake this transaction with the concurrence and knowledge, and at the request, and with the certificate of Governor Chittenden,

Sir, there is another circumstance which is brought before you in the further evidence that has now been laid upon your table, and which is, I conceive, of no little weight in evincing the reality of the transaction, which is the affidavit of a feather-merchant who resides in this town, and he tells you that General Allen did apply to him for the purchase of a considerable supply of military feathers, for the Militia of Vermont, that he gave him an actual order for 5000 for his own division, and ordered him to send patterns for the officers of the other divisions, for them to chuse for the rest of the corps; Sir, this I conceive to be a very material circumstance to be laid before the Court in this cause, because it does shew you that General Allen was actually employed in this country, in the same voyage in which he was making this contract for the arms in France, at the same time he was employed in this country in providing other military accoutrements for the same corps, and nothing can throw a stronger appearance of truth and probability than shewing him to be actually employed at the same time in providing other military accoutrements here for the same corps: Sir, it is to

be considered that you have all the positive evidence in the cause, that you have all the papers which clearly prove the design of General Allen, and the intention of the cargo.

Sir, on the other side, what is there in any part of the cause which gives any colour whatever, or any countenance to the suggestions and suspicions which they have thrown out; neither in the presumptive evidence found on board the ship, nor in any part of the subsequent evidence is there any thing which can give colour or countenance to the suggestion set up; is there any ground or foundation for those suspicions and suggestions? Sir, you have then on the one side proof both from the original evidence found on board the ship, and from the further evidence which has been already produced before you, you have in both these full and clear and satisfactory proofs as to the truth of the representation of the case on the one side and on the other, and you have not one tittle of evidence whatever to oppose it: Sir, if it was possible that any further information could still be acquired on the subject, if it were possible that the Court would still think it necessary that this certificate, on which so much has been said, should be produced, undoubtedly General Allen would take any measure in his power to prevent the condemnation of his property, and would endeavour at the procuration of that certificate from France; it seems however, extremely improbable that he should succeed,

ceed, considering that the two countries are now almost in a state of open hostility, but however the endeavour will be made if the Court think it absolutely necessary. Sir, we conceive, on the grounds which have been stated, that the Court cannot find it necessary that such an evidence, or any further evidence should be produced. Sir, you have the evidence before you fully proving the whole of the transaction. Sir, on the whole of the evidence you have had laid before you on the part of General Allen, you have had evidence of his property in these goods and of their destination, and from the general account which has been given you, you have the truest possible evidence of this cargo on board the ship, you have it proved before you, that there was a deficiency of those arms, you have it proved before you that that deficiency was felt severely by the officers, they were anxious to provide a supply, and that they had actually made an endeavour to obtain such supply but had failed; you have proof before you that this gentleman, General Allen, was a person the most proper of any that could be to engage in a transaction of this kind, from his character and situation in the country, and from his command of this corps of Militia, and you find that he undertook this business at the request of the Governor of the country, which is proved by the certificate, the contents of which are laid before you, and more particularly by the advertisement sent by General Allen at the time of the transaction; it is proved that there was this deficiency of arms, it is

proved that the officers were anxious for the supply, and that this gentleman undertook this supply at the request of the Officers of the country and of the Governor; that he made declarations a long time before he set out on his journey to Europe, that such was his wish and intention to complete that supply: Sir, you have the whole of the transaction given you, as it was carried on by Mr. Thorne and by Mr. Putman, and that he sent public notice out to the State of Vermont, and to the Officers of that State that he had actually made that purchase of those arms for them, and called upon them to take those steps to distribute those arms among themselves.

Sir, under the full proof of all these circumstances, the constant and uniform declarations of General Allen that he did purpose to purchase arms, and calling on the officers to take steps in consequence of that supply, under all these circumstances I conceive that the Court can have no possible doubt that the truth of the transaction was really such as it is stated by General Allen to have been, and that the history given by General Allen of the transaction is founded in real and indubitable facts. Sir, we trust the consequence of this conviction will be that the Court will restore the property to the person to whom it is found to belong, and we trust that the Court will find themselves bound in justice to go further than this, because the proof on which we rest does not depend only on the arguments submitted

to your consideration, but on every document found on board the ship, for all the ship's papers clearly prove that which was before proved, namely, the destination of the ship, and by the other papers on board, all which shew that she was intended for New York, and which could not have been put there for any other purpose whatever. Sir, the further evidence has tended to confirm these documents, and we submit that in these documents there is full and satisfactory proof of that destination, and therefore we trust that the Court will not only restore this property, but will likewise give to the party the costs sustained in this cause.

Sir James.—I have pointed out the deficiency. I have heard a very long (I will not say tiresome) argument; through not being very well I am easily fatigued. If your client Doctor thinks he can make a better case, and you are willing, Sir William Scott, it shall be so, I have been willing to hear the parties all along; this is the fourth day I think I have sat to hear this matter.

Sir William Scott.—Sir, I am for the Captors, I have no authority.

Sir James.—Will you let it stand till to-morrow, and consult the Captors upon it? I speak pretty feelingly, and I desire all the Proctors to attend to what I say: I have done my best during the last war to prevent litigations without end and infinite expence to both parties;

parties ; this is a cause big, I will say, with moment to the American States, for all Americans are not friends to America, all who call themselves its friends are not friends to the present constitution of America, I should suppose, and I hope it is so, that Mr. Allen had no other view distant from his country, and that he will prove a staunch firm friend to his country. It is said Mr. Pitt is a friend to Mr. Allen ; I do not enter into that ; I am not at all inclined to hear any more of this cause after I have given my poor opinion upon it after to-day, unless the Counsel for the Captors are willing that the party claiming should go into further proof, and unless also the parties claiming are desirous so to do.

Dr. Nicholl.—Sir, with respect to the freightage.

Sir James Marriott.—You are very hasty, Doctor, you are very impetuous, you are pushing to the point of the freightage and demurrage, and the expences, now you are about the claim of restitution.

Sir Wm. Scott.—Sir, I shall have no opportunity of consulting the parties who are interested.

Sir James.—Then will you take time to consult them, because I do not like to have this cause hung up.

Sir Wm. Scott.—Sir, here is a circumstance I am desired to remark on the part of the agents, as to what Dr. Nicholl said concerning them.

Sir

Sir James.—To be sure, it had nothing to do with it, but I did not like to interrupt him.

Dr. Nicholl.—I did not know who the agent was, therefore I could have no motive.

Sir James.—If the agent was Old Nick, it was nothing to the purpose, let it be who it will; will you be ready to-morrow, or go to next Wednesday? It is not the man, it is the character of the State of Vermont—there was a time when I had not the best opinion of that place, but I believe it is pretty well regulated now. X

Sir Wm. Scott.—I hope it will not be inconvenient to the parties on either side that it should stand over till next Wednesday.

Sir James.—Whether I sit here to hear one thing or to hear another thing, it is the same thing to me.

[Adjourned to Wednesday, 5th July.]

A true copy, examined by my short-hand notes.

E. HODGSON,

*Short-hand writer to the Old Bailey for eleven years,
Elim-place, Fetter-lane.*

X The probably alludes to 17 Octob. 1797

Wednesday, July 5, 1797.

In the Admiralty Court.

The OLIVE BRANCH.

FOR FURTHER PROOF.

Dr. NICHOLL.

SIR,—In this cause, since the fitting of the Court, there have arrived very fortunately, perhaps, I may say, providentially, the exact proofs that were wanting in this cause, namely, the certificate from Governor Chittenden; the papers consist of a letter from Mrs. Allen, the wife of General Allen, annexed to the affidavit of General Allen, in which he states, that he had sent over to request Mrs. Allen to send these proofs to him, and it consists of another letter inclosing these proofs, and a letter from Governor Chittenden, in which he says, that he had requested, in December, 1794, General Allen to purchase arms for the Militia of Vermont. Sir, there is an affidavit also of Brigadier General Stoddart, Brigadier General of that Militia, to the same effect; there are two newspapers, one entitled the Rutland County paper, in which the advertisement appears to have been published there the 14th of November, 1796, that is, before the capture in question; there are duplicates also of these papers, and there is another advertisement inserted in the

Vere

Vermont Gazette. These we shall submit to the Court in proof of what we have asserted, namely, that there was an authority and request given by Governor Chittenden to General Allen, to purchase the arms in question, and from these additional proofs, we trust the Court will have no doubt whatever, that these arms were purchased for the reasons that have been already mentioned.

[The Affidavit of General Allen read.]

The Rutland County paper, dated 14th November, 1796, the Vermont Gazette, dated the 18th November, 1796, containing the aforesaid letter, marked No. 5. Now, Sir, this is agreeable to the direction of Mr. Allen, I herewith transmit to you the depositions of Governor Chittenden and Brigadier General Stoddart, (*read.*)

[The other papers and the duplicates read.]

SIR WM. SCOTT.

SIR.—It is my duty to trouble the Court with a few observations on this additional proof which is now brought in, for the purpose of stating to the Court how far this addition supplies those defects which have been pointed out very forcibly by the Court itself, in its own observations on this cause.

Sir, the additional proofs consist of papers which General Allen in his deposition states to have been
received

received by persons in this town, in consequence of applications made by himself to the State of Vermont, he having desired that these letters might be sent, and they have arrived: It is a circumstance that one cannot help mentioning, that General Allen does not mention them in the former affidavits; and it does not occur to me that that circumstance was mentioned, that he had used the diligence of sending to America to obtain proper authentic documents; I do not observe that this appears from his affidavit to have been done, and indeed, from the state of the transaction, it must have been done pretty early; I do not perceive such an observation to occur in any one of the affidavits, which is rather singular.

Sir, the additional proof now brought in consists of two depositions as they are called, or two affidavits as we shall call them, one of Mr. Allen, and the other of General Stoddart. Sir, we contended before you on the evidence that was brought in before, that it contained very little more than conversations between General Allen and other gentlemen, and in truth went but a very little way to establish the real fact of the cause: It had been observed, that if a person had had business imputed to him, and which he was suspected to have transacted, nothing would be more natural than that he should hold out in conversation that somebody was at the bottom of it, and that he should frequently make it a subject of his conversations. Sir, all these con-

versations

verlations were consistent with a design very different
 to that which he had represented; for the purpose of
 glossing over those designs; among others was that
 part of the exhibits of the original authorities of
 Governor Chittenden, that transaction to be sure is
 described in such a way, that one finds a difficulty
 in conceiving whether Mr. Allen means to represent
 it, that this purchase of arms was a public transac-
 tion by himself, under the authority of the State, as
 an agent, that is clear sometimes, at other times that
 it is a private voluntary undertaking of his own, for
 which no authority was necessary, or was obtained;
 but to be sure the general representation of it, and
 which was intended to be relied on by the party is,
 that it was under the authority of the State, that it
 was under a sort of commission from the State, a
 matter in which I do not see the State pledged its
 funds in any manner, because it was supposed to be
 answerable out of the private funds of Mr. Allen;
 but was fairly to be considered as a public transaction;
 in which Mr. Allen is not to be considered as a mere
 mercantile character himself, but as a man standing
 in a public character, and on a public account.
 Now, Sir, in that light I cannot help pointing out
 that the documents by Governor Chittenden, and
 also by General Stoddart, fall very short of that
 distinctness and that fulness which the case appears to
 require, for with all the respect which I know and
 feel to be due to a person who is in a public and
 considerable situation, I must beg leave to observe,

that

that Mr. Chittenden testifies, that in November, 1795, he requested General Allen to purchase arms and other implements of war in Europe for the use of the Militia of the State: Now it is not here stated that Governor Chittenden did this more than in the course of conversation; it is rather an unusual way of doing the public business in any Government, to give verbal instructions, here are no reference to any public credentials which he supplied him with for that purpose, here is no reference even to that credential, credential of which Mr. Allen says he was possessed, and which he delivered to the Government of France. Sir, with what credentials is he provided? Undoubtedly he must have documents, confirming his authority, and limiting the extent of that authority with precision, stating the extent to which that authority was to be applied. Sir, here is no specification of the numbers that were wanted, here is no specification of the prices at which they were to be purchased, for the supply of the State of Vermont.

Sir, undoubtedly if Mr. Allen was to purchase arms at this monstrous expence, and to such a vast amount, for the supply of the State of Vermont, something must be passed, some arrangements must have been made relative to the price at which the individuals were to be supplied with arms by him, and of the manner in which they were to be distributed, and the form of those arrangements must have

have been made under the authority of the Governor.

Sir James.—Does not the affidavit say, that he had actual credentials from Governor Chittenden?

Sir Wm. Scott.—No, Sir.

Sir James.—Does not he use the word credential?

Sir Wm. Scott.—Yes, Sir, credentials to the French republic.

Dr. Lawrence.—A letter of credence from the republic of France.

Sir Wm. Scott.—Sir, this Gentleman says nothing, and for ought that appears, nothing more passed, that there was some scarcity of arms, without any authority to purchase arms, at least, conveyed in the usual way in which authorities are conveyed by persons acting in public situations, I say there is no specification whatever, and Mr. Chittenden goes on to say, that he knew it to be the intention of Mr. Allen to purchase warlike instruments, before he parted from America; further he says not. That it was Mr. Allen's intention, to be sure, that is leaving it on a very slight and indefinite footing, that he knows it was his intention to purchase what number

A a

of

of arms he could, in what way all these were to be supplied is an entire silence on the part of Mr. Chittenden, there is an utter silence to the last, for if Mr. Allen had purchased these from the American States, he must have had a direct and immediate communication with Mr. Chittenden, he must have informed him that his negotiations in England had proved abortive, that he afterwards resorted to France, that there, by the fortunate medium of General Clarke, he had been successful in his applications, and had now purchased arms to the amount of such a quantity, which would be delivered to the privates at this fort. Sir, that is, to be sure, the natural correspondence which a man of business, such as Mr. Allen appears to be, would naturally enter into, such a kind of correspondence would naturally ensue, but Governor Chittenden knows nothing of it, except that Mr. Allen said it would be a fine thing, and professed an intention of buying arms here; but further says not.

Sir, the only addition to this, if addition it may be called, is a Mr. Spafford, who says, that he knows that what Governor Chittenden has said is true, that he was desired by Governor Chittenden to purchase arms and other implements for the use of the Militia, and he knows it was General Allen's intention to purchase arms for that purpose; that is the whole of it, this is nothing in point of extent, this does not go an inch further than Governor Chittenden, only
confirming

confirming what Governor Chittenden has said. Now, Sir, it is for you to determine whether these affidavits, subject to these remarks, certainly flight in themselves, flighter still if considered relative to the nature of the transaction, and the persons concerned in it, whether these are, of themselves, sufficient to remove those suspicions, the justness and propriety of which the Court have already stated.

Dr. Nicholl.—I understand, Sir, if it is possible that the Court should not be satisfied with these further papers which are produced, General Allen has received advice this morning that a vessel is arrived at Falmouth from America, in which he expects further papers, and probably an authentic copy of the certificate of Governor Chittenden; the vessel is arrived at Falmouth from America, of which he received advice this morning. General Allen is also willing, if the Court should require it, to take a journey to Paris, to endeavour to get the copy of the certificate from the French Government, for he does feel that his character is infinitely affected, as well as his interest.

Sir James.—I expected to hear Mr. Allen say, this is the consummation of his proof, but it seems it is not so, he must say what he will do, and what he will not do; the conduct of this cause is like a military operation, the moment the regiment opposite to you has discharged their fire, you reinforce your

own regiment, and give fire. This is not the conduct of a Court of Justice, and I want to know how far you intend to go, whether the Court will permit General Allen to go on in this way, or whether the parties will have my opinion, and carry it up stairs to hear what the Lords say. Now there is another matter of fact, and that is, there is a man, I forget his name, he seems to be a man running backwards and forwards to England, sometimes at one place, sometimes at America, and then he is no longer resident at America, and that man seems to be the go-between of the French Government and General Allen, this man has never produced his correspondence.

Dr. Nicholl.—That was Mr. Thorne, he had no communication with the French Government.

Sir James.—Then how could General Allen carry it on?

Dr. Nicholl.—Through the medium of General Clarke.

Sir James.—I think it was stated that the contract was partly verbal and partly written.

Sir Wm. Scott.—It says the contract was principally verbal.

Sir

Sir James.—How are documents to be had from France? The French Courts will not give them, nor do I know I should pay any attention to them, if they would give them. We are getting into conversation about all these things; go on Doctor.

Dr. Lawrence.—Sir, I would mention that nine days previous to this contract, the French Government, in truth, dissolved their treaty, not meaning to carry it into execution, but that was kept a secret; I do not state that fact as affecting Mr. Allen, because it was a secret to the Court, and not within its knowledge, but I mention it only on the presumption of the Government of France affording 20,000 stand of arms, with a train of artillery, for the convenience of that very State with whom they had broke their treaty some days before, that requires every kind of explanation. Now, Sir, with regard to the evidence on the other side, it does not seem to have mended their case, though the learned Gentleman observed that very fortunately, and, as he thought, providentially, this evidence had arrived. Now for what purpose this great and special interposition of Providence was vouchsafed, does not appear, unless it was to let us know the facts, and, providentially, for the purpose of justice, and to save this Court from a mistake, that it may not do injustice where it presides. Sir, the Gentlemen say, it has all that proof which is necessary to ground your decision upon. Sir, we say, that instead of

A a 3

that,

that, here is every thing but what we did desire. Sir, there are three duplicates, two copies of advertisements, upon which it was remarked, indeed, by the learned Gentleman, that these two copies of advertisements were the same, literally, as those that were in the original papers, of course this is not some of the providential proof that is come to keep the Court from a mistake, of course what is produced on that head cannot go further than it did on the original papers, it was printed in the original papers, it was printed in such advertisements, and was transmitted to America, beyond that, the Court giving credit to the affidavit and that letter, and the papers that were found on board, cannot go, to be sure it was as credible as any paper of that sort could be, it was just where it now stands, namely, that that paper was in the newspaper, and the newspaper is produced, but the Court recollects, I am sure, the arguments made use of by the King's Advocate, that if this was a culpable transaction, it would be coupled with something of this sort, that such an advertisement would be only something that a person would naturally be expected to insert, that some few arms might be intended for the Militia of Vermont, and under the cover of that, that a vast quantity of arms might be disposed of to some other purposes. Sir, in a case of this kind, that might certainly require some sort of explanation, some arms, some ammunition, some artillery, might be necessary for them, but not mentioning what. Now, Sir, putting these

two

two advertisements out of the case, which two advertisements are word for word the same, is this any thing tending to remove that burden of proof which we, and not only we, but the Court, think lays on the Claimant in this cause? What was it? Was it any thing that passed in conversation with Governor Chittenden? No, but that there was some kind of solemn purpose, some kind of solemn authority, not in the regular form, but something given, something shewn, and communicate to the party. Now, with respect to this, the Court will find that it is said by General Allen that that authority was left at Paris, and here comes a person who says so from his memory, and that he thinks it will be useful for him to have the papers with him in his defence before the Court. These letters, which were not so essential to him in his travels through Europe, and which so recently after, when he had made that contract, he did bring away with him from France, these were that certificate, that authority, this letter of credence, as the Claimant, witness his Aid-de-Camp, calls them. Now, Sir, we required also what appeared on the shewing of their case, some certificate, some evidence, some affidavit, from General Clarke, or some other person that negotiated with the Government of France, we required that correspondence which passed to be produced in some way or other, we apprehend the nature of this contract, being a contract where the French Government had an existing interest for seven years to come, we desired

that to be produced, being that to which they would certainly look in some way or other, as in future the probability was, that other persons might come in the same situations, who might be disposed to look into their conduct with some degree of reason and with some degree of jealousy. Now, Sir, is there a single word of any thing of that kind? On the contrary, it seems to me that Governor Chittenden goes no further than conversation, he seems to negative the idea of a commission, he says he requested it of General Allen, and he has a general certificate from the Governor, he is proposing to come to Europe on business, so that, as it appears, this Gentleman had fully settled and proposed to come previously to his mentioning any thing of that sort to Governor Chittenden; this affidavit, therefore, instead of reciting such a certificate, says nothing of that sort, it does not appear to you on the face of these papers, there is nothing more than a mere conversation, it is, therefore, that which can by no means supply what was wanting, and which was done about a month after he had settled this plan of coming to Europe, some conversation passed between him and Governor Chittenden about buying arms, neither more nor less does this go possibly or probably to any thing more than that some arms would be purchased for the Militia of Vermont, but that such a quantity of arms, such a train of artillery could be wanted, is there any thing at all shewn? Is there any mode in which he was to be paid

paid for them? It is nothing more than this, some of the Militia want arms, I think of getting some arms for the purpose of supplying the Militia of Vermont. Sir, it is beyond any sort of rational belief that the Militia of Vermont, which has been furnished so many years, could be deficient in so many train of artillery.

Sir, with respect to those suspicions of a grave kind, with respect to that burden of proof, it now appears clearer than ever, that we were warranted in requiring all possible explanation, and he now says, he has been writing letter after letter for the purpose of obtaining that advice, that communication, that must have enabled him to have furnished that explanation which the purposes of justice necessarily required of him. Sir, the Court will consider whether this circumstance is cleared up to the satisfaction of the Court, whether this Olive Branch, loaded with arms, is a good emblem of American amity and friendship, or an emblem of French fraternity, under the appearance of peace, while they are attempting to spread war over the whole world, the Court will take into consideration, and whether, after so many days, they will go on, further hearing affidavit after affidavit.

Sir James.—I want to know whether you sent to the agents?

Dr.

Dr. Nicholl.—Sir, in consequence of your directions last Court, I saw the agents and the Speaker of the House of Commons with them, and it was their desire that the judgment of the Court should be had, as the proof now stands.

Sir James.—Then you are not willing to let the cause go any further without the Court wishes it? then go on to support your proofs.

Dr. Nicholl.—Sir, I humbly presume that if it is possible that the Court can have any doubts on the proofs which we have now adduced, it is still a matter within the discretion of the Court to allow the party to produce any other proofs in which the nature of the transaction may be involved, rather than proceed to sentence of condemnation; undoubtedly the Court will be guarded how it proceeds to this sentence, which may be founded on an erroneous judgment, as well as to clear the character of the party from those suspicions and observations which must necessarily be thrown out against him, he is ready to furnish any evidence which may be within his power to produce.

Sir, having premised this, I will call the attention of the Court to those observations which do appear to me to come up precisely to that proof which the Captors themselves, in every stage of the business, have demanded, which is, that those arms were
destined

destined for an innocent purpose, and as the means of satisfying the Court that they were so destined, that General Allen should shew, to the satisfaction of the Court, that he purchased these arms with the knowledge and at the request of the Governor of that State for whose use the arms were intended. Sir, if we have been able to shew that satisfactorily to the Court, I trust there can be no question whatever as to our title to restitution, because if these arms, notwithstanding their quality, were destined for an innocent purpose, if they were destined not for the enemy, if they were destined not hostilely to this country, the party is as much entitled to them as if they consisted of a bale of cotton, or a quantity of paper. If this Court has any apprehension that after their restitution they may be applied to improper purposes, if this Court has any apprehension that they may fall into the hands of the enemy by capture, the Court will recollect that in an early stage of this business, General Allen offered, that after he had restitution, he would sell these arms to the British Government on their paying a fair price for them, but the only question which the Court has to decide, is, whether or not these arms, at the time of the capture, were destined for innocent purposes. Now, Sir, the important circumstance which was to satisfy the Court of the intention is this, that General Allen made known his undertaking, and the purport of it, and received his directions from that State to whom he had so communicated

municated his intentions, and to whom he was responsible for his conduct.

Sir, I need not call your attention to the original evidence in the cause, but merely confine myself to the consideration of this additional proof, if any doubt remains in the mind of the Court. Sir, *in limine*, there have been several objections taken to these affidavits, because they were not mentioned in the former affidavits, undoubtedly it might be contended before the Court, at the same time it was a matter of consideration, and of proper consideration, and of execution, also supposing that other minds might not receive the same impression from the evidence which General Allen did, it was a proper application, lest the original proof should be held insufficient, for at first it was not necessary for him to mention in his affidavit that he had taken every measure of caution, that the Court should wait till these additional proofs should be brought in, because it was a very important object to him to obtain the property as soon as possible, it certainly was a very desirable thing on this part to obtain as early restitution as he possibly could. Sir, as to the observation, that it shewed that General Allen thought there was not sufficient evidence, I apprehend it shews no such thing whatever, every party is to propose to himself the means most likely to defend him against the possibility of any event, he will be entitled to have the advantage of his original evidence, he

he will be entitled to be put into possession of his property, and return to his own country. On the other hand, if the urgency of Captors, and the impression this shall make on the Court, shall yet induce the Court to order further proof, it would be his duty to obtain further proof as soon as possible.

Sir, Dr. Lawrence, who spoke last, has recalled your observation to the origin of the transaction; he says, it is very extraordinary that General Allen should not have had this conversation with Governor Chittenden, he has never stated, in any part of this cause, that the object of his coming over to England was merely for the purpose even of purchasing these arms, that was only a secondary consideration, having formed a plan of coming to Europe in order to solicit the British Government to make a navigable canal from Lake Champlain to his estate in Vermont, and then to buy arms. It appears, by the affidavit of Mr. Johnson, who made an affidavit in this cause, that General Allen did expect, that if that canal had been made, he should have been able to export numbers of masts and naval stores to this country, to the amount of £10,000 a year, and the only reason of Government's not complying with his request was, because they had not ultimately set aside that war in which they were engaged. It was not very accurately stated that he took this voyage for the purpose of purchasing these arms, it was his intention to purchase arms, and he states,

states, that the Militia of Vermont being badly armed, he would purchase arms for them, he communicates that to Governor Chittenden, in consequence of which, as the affidavit now fully proves, Governor Chittenden requested General Allen to make the purchase, that was in the month of November.

Sir, it has been said, it is a mere verbal request, and it has been demanded, why have you not an authority in writing? and that there has been a different representation of General Allen, whether in buying these arms he was the agent of the State of Vermont, or whether he was a private agent, or whether he bought on speculation. I apprehend there has not been the least variety of representation in that respect, from the beginning to the end, that this is purchasing on his own account to sell them out again to the Militia of the State of Vermont, at the request and by the authority of the Governor of the State.

Sir, it has been proved to you, by the last further proof, that every Militia must provide themselves with arms, they were to find themselves with every implement for this military array, this being proved, therefore, it was not at all necessary for Governor Chittenden to employ General Allen as an agent in this business, as an agent for the State, on the contrary, that would be a suspicious circumstance in
itself,

itself, because it would be a departure from the manner of procuring arms which the State describes.

Sir, permit me to ask, what then is there improbable in this, that General Allen, being the commander of one of the divisions of this regiment, coming to Europe for other important purposes, wishing the Militia to be better armed, and having made attempts to procure some and could not, what was there at all improbable that General Allen should undertake to buy a quantity of arms to sell to the individuals of the Militia of Vermont, and communicate that to Governor Chittenden, that Governor Chittenden should have advised and requested him, during his stay here, to purchase arms for that purpose? Sir, the history of purchasing these arms is consistent, I apprehend, from the beginning of it to the conclusion, and is not at all to be censured; on the contrary, if we had produced any direct authority, appointing General Allen agent to purchase these arms, there would have been a contradiction to the law of America, that Governor Chittenden should have made the request, but that he should have inserted in this certificate that he was requested to purchase arms, is consistent with the declaration of General Allen. It is said, however, that Governor Chittenden, in this affidavit which he has made, does not set forth that there was any specification of the price of the arms which had been paid by him. Sir, they were purchased
as

as the property of General Allen, and Governor Chittenden had nothing to do with it. What had the State of Vermont, or the Governor of the State, to do with the price of these arms? Every individual is to purchase them of General Allen, on the best terms he could, but the price was a matter utterly unknown to Governor Chittenden, and not merely unknown to him, but a matter with which he had no concern whatever, on the contrary, it is perfectly concordant with our account, no such transaction should have been made with him.

Sir, it is said, it is a little extraordinary that this affidavit of Governor Chittenden does not contain an history of the latter part of the transaction, again I say, what had Governor Chittenden to do with that latter part of the transaction? What had he to do with the terms on which they were to be purchased, or the mode in which they were to be carried into America? Sir, the Gentlemen have also made some observations on General Allen being detained in this country before, as it should seem that he had any communication with this Court. Now I must say, that General Allen erroneously supposed he was to obtain the restitution of these arms without making application to the Court of Admiralty for them, but finding there was a difficulty, he immediately writes over to his wife to send him those certificates, the affidavit is drawn up in this short time, which informs the Court where it
was

was that this authority of the State was given, to contract for these arms, for then, as I understood, the Captors themselves would be satisfied if the Court was satisfied; it was dropped by the Court, and that this Gentleman professed he was going the tour of Europe, but yet, as soon as he had purchased these arms, he was going back to America, the Court will recollect he had done all his other business, his primary object was the canal, in the spring of the year 1796, and that original business was completed by General Allen. Sir, he had a very extensive domain in Vermont, and he proposed to dispose of a part of those lands, to persons in Holland and France, whom he understood were, on account of their dissatisfaction to the Government of both those places, for transplanting themselves and emigrating to America. Sir, what was there to detain him longer in England? He having been here at this time near a twelvemonth, under these circumstances, I apprehend it is perfectly consistent that he should be returning at this time to America, with these arms, as the whole of his other business had been completed, and so far as he could, he had had a definitive answer on the subject of the canal.

Sir, however great a difficulty is thrown in our way by Dr. Lawrence on this and the former occasion, namely, that it is highly improbable that the French Government should have sold those arms to America, because nine days before this transaction there was

B b

an

an array not very conciliatory to America. Sir, in the first place that was not likely to produce a war between the two countries, and if not there was no reason why the French under those circumstances should not sell arms to America to be carried into that country. Sir, with respect to the treaty he mentioned, the French Government were constantly avowing to the American Minister, Mr. Monro, that they had not put the treaty into execution, in order to put them on a footing of reciprocity with all the other belligerent powers, that all neutrals should in future be treated in the same manner as they suffered the English to treat them, and I should conceive that the law of nations justified them in treating the neutral nations exactly in the same manner as the other belligerent powers; they knew very well how far they could go, they knew very well they could not go into America, they knew very well the specific tendency of the American Government, they knew they could not take any measure to prevent a war with France, nay, at this moment notwithstanding any palliation, we find that America has not gone to war with France, but has taken every possible measure to come to a proper understanding with that country, rather than to go to war, and I apprehend they had no idea this array would produce a war between the two countries, therefore, where would be the improbability of their selling arms to an American subject? But they say this, considering the time when the transaction took place; this supposes

supposes a great deal of strange conduct in the French Government; why so there is, but yet these arms were sold to General Allen, and General Allen did not purchase these arms to furnish the troops of France in any way whatever, but in consequence of that desire which all nations have, and which the military men of all nations very properly profess that the country where they live should have arms sufficient for their defence, and if not necessary for defence, for parade. Sir, there was another objection taken, that at this time we have not produced any correspondence between General Allen and the French Government, undoubtedly we have not, but we have stated that the negotiations for these arms were carried on principally verbally; that General Allen has said he has no papers respecting that correspondence, and the Court must think it is improbable he should in the present situation of affairs; but, say the Gentlemen, you have not proved that General Clarke and General Allen were so connected; it is not probable that we could procure his evidence at this time, and if it was possible the Court would not receive it as additional evidence.

Sir, the additional evidence must, I submit to the Court, carry conviction to the minds of the Court, that those arms were really destined for the Militia of Vermont, that they were really designed for no other purpose whatsoever, and that by all the documents, and by all the depositions there is complete

proof of the destination of the property, and there is also a compleat account of the destination and conduct of General Allen by his own attestation and evidence over and over again, all that the Court meant, as I understand, was, that he should shew he was authorized by Government to purchase these arms. We have shewn to the Court that the only authority that would exist was a mere approbation of the Government of the States to some individual to purchase them; this individual, however, does undertake to purchase them with the knowledge and at the request and approbation of the Governor of Vermont. Sir, that these arms were destined for that purpose when you see the advertisement in the different newspapers in America, can no longer remain a doubt to the Court; but they say that this was only what was in proof before the Court already; undoubtedly it was that there were such advertisements, but is it not a strong proof, that what the Gentlemen have suggested to be unfounded is really a fact, and that this was not a colourable and ostensible paper; that is the purpose for which these papers were introduced, it does appear to furnish the strongest proof that he had taken measures of sending over to get the advertisements to be inserted in different newspapers, communicating to the officers that he had made the purchase in question, and to state the deficiency which there was in their arms, in order that on the arrival of this cargo they might be properly supplied. This was inserted in the newspapers of Vermont,

mont, and in the Gazettes of Vermont in the same month, in November, 1796. Sir, we have proved every thing that the Courts have required, and every thing that reason and justice have desired of us, we have done it not hastily, and I trust that the Court will feel no sort of difficulty in pronouncing that General Allen has a right to have this restitution.

Sir James.—Here are 150 tons and £500, that is not an usual freight, on the contrary I think it appeared when the last case came before the Lords that it is not at all a common freight, I only tell you that it struck me that 500l. was a great deal of money.

Dr. Nicholl.—I really think, with great submission, that if the Court inquire of the Register, that the freight is by no means high.

Register.—I do not think it was a very high freight.

Sir James.—I observe the Counsel on the other side have not mentioned it.

Dr. Arnold.—Sir, we had hoped that by the several proofs before the Court on the last hearing, the original documents on board the ship, and the others which were afterwards introduced into the cause, that this would have been satisfactorily established before the Court, doubts and suspicions however, were raised, and particularly with respect to one of the pa-

pers, upon which we rested for proof of the truth of our assertion, with respect to the request said to have been made by the Government of the State of Vermont to General Allen, to make such a purchase of arms as he afterwards made. Sir, I think that the papers which are now produced before the Court have arrived most fortunately to clear away every doubt and every suspicion respecting this point, conceiving that these papers did appear to do away the whole objection that could be made, but objections and many objections have been raised by the Gentlemen on the other side, and it is my duty to offer to the Court some few additions to the observations of the learned Gentleman who spoke last on the objections which were made by the Gentlemen on the other side. It has been said that General Allen, in his original affidavit, did not mention to the Court that he had made application to his friends in America for the proofs which have been since brought in. Sir, I conceive it would have been matter of extreme imprudence in General Allen to have inserted any declaration of that kind in the affidavit which he then made, because it would have aided the objections of the Counsel, and they would have said he has declared in his affidavit that further light and more evidence may be given, and therefore by waiting a little longer this further evidence may be obtained. Sir, this kind of argument would undoubtedly have been used for the purpose of delaying the redemption of this cargo, which he apprehended himself

to be entitled to on the original evidence in the cause, and therefore it would have been matter of extreme imprudence in him, relying as it did rely on the fullness of that evidence, to have introduced any declaration of this nature; but at the same time it was a matter only of proper prudence and consideration in General Allen to send to America, in order to procure some further proof if thought necessary by the Court. Sir, he had very considerable doubts on the subject, he had been told that his own knowledge of the innocence of the transaction might not be sufficient to protect him, that there might be doubts and objections raised, which he must answer by evidence on these suggestions, however, he relied on the innocence of his case, however, he relied on the proofs of that innocence in the original evidence, it was certainly necessary for him to send for further evidence, which has been since adduced, at the same time relying on the original evidence found on board the ship, but instructed that further evidence might be necessary under such a view, undoubtedly, the application he was to make would only be to procure evidence to prove, in a general manner, if necessary, the great points which it was necessary for him to answer: It was impossible for him to see the objections which would be raised in the cause, and more impossible for him to raise evidence that might meet it. Sir, this is the answer to the objections on that evidence which is now brought before you. Sir, it has been said that the affidavits which are now

produced do still fall short of giving that satisfactory information to the Court, which they expected from them; if General Allen was a merchant, and did actually, publicly, on general grounds, purchase these arms, he should give satisfactory proof of it. Sir, on the different arguments, the Court will undoubtedly recollect, that we have never represented General Allen as a public agent, he has represented himself as a private person, purchasing these arms on his own account, he has represented himself as coming to Europe, not on this business solely, but on other business of considerable importance, one of which was the obtaining leave to cut a canal, and he took that opportunity of procuring the arms that were wanted for the Militia of the State of Vermont, he did this on his own account and risk, and for his own advantage, but that he did do this, though not as a public agent of the State, yet with the knowledge, with the approbation, and at the request of the Governor of the State. Sir, this is the light in which the transaction has been ostensibly represented to the Court, not as an affair of General Allen's alone, but as a public business, and it has been said that the affidavit of Governor Chittenden does not shew that that request was made any otherwise than merely in conversation, that there is no reference to the credentials given by him to General Allen; undoubtedly the affidavit does not speak particularly to the manner in which that request was given, General Allen had been taught that it was necessary for him

him to shew that there was such a request made to him by the Governor of the State, and he was to send out for an affidavit to the purpose, but under the observations I have submitted to you, this could only be as to a general instance to establish to the Court in general, that this request could be made by the Governor, not foreseeing the cavils, the minute objections on every part of the case, he had to prove that such a request might be made by the Governor, and he sent for the affidavit, and such is the affidavit now produced, it speaks fully and clearly, and satisfactorily to the point. The gentlemen say the affidavit does not say that any request was made in any particular mode, that it is not specified whether it was verbal, or by a written instrument. Sir, there is no contradiction to this, or to any other evidence that the Court has before them, it does not state that this request was made merely verbally, or by written instrument, the probability is that it was made both ways, one verbally, and the other by a written instrument; the affidavit proves the great and principal point, that the application was made to General Allen by Governor Chittenden, the manner in which it was made is not set forth. It is proved to you that General Allen was furnished with a certificate of this sort, and that he saw it in the hands of General Allen. Sir, it has been said likewise that this affidavit of Governor Chittenden does not contain any specification of the number of arms which were to be bought, or of the price which was to be given for

for them. Sir, it is a consideration to which I have before called the attention of the Court, and I conceive a sufficient answer to this objection is this, General Allen was not going on the public account of the State, not going as employed by Governor Chittenden on the part of the State, the number of arms, therefore, which he should purchase, must depend on his own prudence, not on the situation of the Militia, not on the deficiency of arms amongst them, and the numbers that were wanted for them, the price was no object to Governor Chittenden, it was no object to the State, they were not to pay for them, it was to be paid for by the private Militia, and the advantage or loss that might ensue on that contract, and the price of these arms, was a consideration for General Allen only, he only being interested in it. Sir, the affidavit of Governor Chittenden and of General Stoddart state another fact, and which, I conceive, is extremely important, that they knew it to be the intention of General Allen to purchase arms for that purpose before he left America: Several other attestations have already been laid before the Court to the same effect, shewing that it was the intention of this gentleman, that it was his general and habitual conversation, that he did intend to make a contract for that purpose, this is confirmed, as I conceive, by the attestation of those two persons holding each of them high offices in this very State, they were acquainted with this intention of General Allen's, they knew it to have been his intention to
make

make a contract for this purpose before he left America, nothing as I conceive can tend more strongly to corroborate the evidence than these circumstances. But the gentlemen say, if these arms were bought under the authority of Governor Chittenden, there must have been a communication after the purchase, from General Allen to Governor Chittenden. Sir, the same answer which has been given to the other objections, applies to this likewise, he was not acting as the public agent of the State, or as the agent of Governor Chittenden, on his own account and risk, and there is no reason, and nothing further could be expected than that he should communicate to him the circumstance that he had made that contract which he had been requested to make, and which he had before his leaving America expressed it constantly his intention to make; he says he wrote to Governor Chittenden, and he inclosed a copy of that affidavit which is now distinctly proved to have been inserted in several newspapers in the State, this, as I submit, is all the communication that could be conceived, he certainly gave to Governor Chittenden the particulars and price of the property, these advertisements have been called to your notice before. Sir, there was a document found on board the ship, and you have the affidavit of a person who saw it, and you have one of the newspapers; it is said, however, this is an advertisement that might have been inserted by a person having a plausible intention, and with a view to cover some fraud. Sir, it seems to me this

is

is a suggestion beyond all the bounds and limits of probability. Why, Sir, if this is so, Governor Chittenden must be implicated with General Allen in the same transaction, because the advertisement vouches the transaction, the advertisement vouches that a request was made by Governor Chittenden to General Allen, but, Sir, the advertisement goes further, it does not merely make a declaration that the contract had been completed, so that the arms had been bought, but it does likewise call on the officers of the Militia of that State to take active measures themselves, in consequence of this purchase, and in order to the distribution of the arms among their several corps, and to give an account of the deficiency of arms in Vermont likewise, in order that he might know where to send them, he calls therefore on the officers to take effective measures to be active, to do acts themselves, in order to the distribution of those arms among their own corps in the Militia, and with these circumstances appearing on the face of the advertisement, it is, I apprehend, beyond all probable bounds, that there could be any colour in this; let the Court then reflect for a moment, whether there is not a sufficient evidence brought before it on this point also. Sir, it is said further to you, that from the number of those Militia of Vermont, it is impossible that they should occupy the whole of these arms which have been bought. Sir, it is proved before you that there was a great deficiency of arms among those Militia, that the officers

cers were very anxious to supply them, that they tried, without effect, to purchase arms there. Now it is proved that on General Allen's coming to Europe, in 1795, he was requested by the Governor of the province to endeavour to supply that deficiency during his residence in Europe; you have evidence of the constant declaration of General Allen, as to his intention, that he did intend to make a purchase of arms in Europe, for the purpose of supplying this deficiency, and you find these declarations consistent and agreeing with every part of his conduct, you find him sending over public declarations to be published in all the newspapers of the State, informing the officers of the Militia that these arms had been purchased for their use, and desiring them to take an account of the number of arms that were deficient in that State.

Sir, you find also that General Allen was employed here in the same business, that he was particularly employed in purchasing other military accoutrements, a part of which had actually been sent off for America for the use of the same Militia.

Sir, I shall not trouble you with repeating the observations which have been already made on the other objections stated by the gentlemen on the other side, but I submit, upon the whole of the case, that there is every full and satisfactory evidence before you, such as must clearly satisfy and convince the
Court

Court that the object of General Allen, in purchasing these arms, was the object he has constantly asserted, and that the arms were certainly meant for the use of the Militia of the State of Vermont, and under those circumstances we trust that the Court will think that the present cargo is a subject of restitution.

THE SHIP OLIVE BRANCH.

SIR JAMES MARRIOTT.

This cause has appeared before me in a very singular and a very suspicious light, when I consider the very particular situation of this country and France, and when I consider the French system of dividing all the Governments almost over the face of the globe, by dividing the multitude of republican governments, by the French rulers, who appear to like no cut but what is of their fashion, and at a time when the invasion of this country, or an invasion of Ireland, was threatened (and this country is at no great distance from the coast of Ireland) though, to be sure, the intentions of the French were extremely plain, and there is a particular description in a letter from a person in America, of the French bringing down their whole force from one end of the continent to the other, and, at that time, this ship, laden with 15,000 muskets, which, as I am informed, were perfectly in order, not wanting the assistance of locksmiths or gunsmiths, and there,
at

at New York, with all these accoutrements, the scabbards for the bayonets, cannon one and twenty pieces, with all the accoutrements relating to them, are taken on board a ship, which appears an American ship, this ship sailing at such a time, and taken in such a situation, and under those circumstances, this cargo is not to be comparable to cotton or slaves, or wine, or corn, but it is in its quality, in its quantity, such as to create the highest suspicions, and, therefore, I am extremely surprized that the Counsel and Proctor should seek, as they do, and as they did, in saddling his Majesty's officer with costs, who did very well what he did; but if there are suspicions, it is necessary to clear away those suspicions, and the Court has mentioned them. As to the business carrying on by Mr. Allen, as to Mr. Allen, he may be, in a mercantile sense, for as such he presents himself here, a very honest, a very upright man, I give my opinion, perhaps, rather too freely, in speaking of the mode in which causes are to be carried on, I do so, because Americans, in general, I find extremely ignorant of general jurisprudence, and I find all those attached to the French very much mistaken. As to their going into further plea and proof, I entered so fully into that, that I need not mention it now; I set my face against it to prevent eternal litigation, in favor of the neutral, but further pleadings and provings may be necessary, and it proves to be a very great question here in this cause, whether I

should

should think further proofs and pleadings are necessary, Mr. Allen offers that, he does not say in what way, but he does wish that I would give my opinion on the ultimatum of the case. When I turn back to the papers and find that there has not been much delay since the claim was given in, and when I think what it is to correspond with America, in the present unfortunate hostile state of the ocean, and of the Atlantic in particular; under such circumstances it appears very plainly it makes a point in favour of going into further proof; when I was to give my opinion about purchases made by the enemy, for this is not a purchase made by New York or Leghorn, it is not a purchase made from a French Merchant at Bourdeaux by an American Merchant, but it is a purchase of a very singular nature, it is a purchase of the French Military Minister, if therefore, it does not come up to that idea which I have laid down, I can only say at present I am not satisfied that there has been a total conversion of that property. I said I wished that the Lords of the Counsel had considered this, for they best knew what ought to be done for the salvation of the whole country, and that is the best country which tends most to make the subjects safe and happy, providing also that the state should run no hazard; I say if they had given their opinion how far trade may be carried on by a neutral, I should be happy, and should not be driven to the necessity of giving my opinion; what opinion have I given, that the neutral may go from his own port to the port
 of

of an enemy, that he may in open market, not with connivance or machinations of any sort or kind, but in open market make purchases, and that he must pay the full equivalent for the purchase, then there must be a full purchase, and drawing and redrawing, and all those tricks, for tricks I must call them though of use to the mercantile world; I hold that not to be a fair purchase out and out, therefore it does not come within my description; it must therefore be a compleat purchase. Well is this proved, has it been a fair purchase? I am informed, and informed from great authority, that the French are so desirous of detaining the prizes they take, that they have come to a resolution that no neutral shall buy, but be subject to the condition of future redemption, than an equity may arise upon them; why, is that buying out and out? why, what have they done with Mr. Allen, the French Government says he has paid so many thousand livres, is that a sufficient price, and what proof have we of it? I think he says it is paid, so that so far the fifth contract is carried into execution, and at the end of seven years the remainder is to be paid, and Mr. Allen has made himself and his heirs subject to the payment of that money: is that a legal transaction in any one view in the world? is it a legal transaction, I will not say according to the law of America but to any general law whatever, that any man should subject himself and his heirs and his improvable possessions as a pledge to another State? Can the Duke of Northumberland, for instance, for

any purposes, and more particularly for the purpose of arms, to adorn the Castle at Alnwick, can he enter into contract with the King of Denmark, or with the King of Sweden, can he give them power to come and enter his lands? then on what sort of ground can such a contract rest? Why, some of these parties are cobblers, some are shoe-makers, some are taylors, they are all sorts of things, and no wonder that their ideas are not very nice; but is France to have a settlement like Vermont? if she should say Mr. Allen has not paid me, his lands are subject to my controul, I will send a body of troops, I will go through New York, I will take his estate, I am imposed upon: it is a very easy thing, and if Mr. Allen never pays them, I do not see how the devil they will force it; that is an improper expression; well, but Mr. Allen has mentioned this to Governor Chittenden over a bottle of wine, that he intended to take the tour of Europe, he mentioned that he intended to purchase these arms; says he, I wish you would get arms for your Militia, there is very little provided, it will be a very good thing, and I will get at them, and they shall be for every body that will buy them of me; as to Governor Chittenden I know nothing of him, he may be in league with France for any thing I know, and Mr. Allen, not but Mr. Chittenden encourages him clearly, gives him his largest credentials for the French Government, so that I suppose Governor Chittenden has some conversation with the French Government; well, he goes, and he goes after this

Canal

Canal at Lake Champlain, perhaps for still better reasons of his own; then here is another view, and to which we have many affidavits, one is of a linen-draper, he did not want shirts for his Militia, but it was to supply some relations of his, who were to turn linen-drapers at Vermont, I suppose; then he must buy some feathers for his men, and he must send some more if they like the pattern; here is Governor Chittenden's approbation over a bottle of claret, oh, says he, it is not at all necessary that I should have the authority of the States, no law of Europe requires it, says he, there is my very good friend, Mr. Rufus King, the Ambassador from America, he says, he does not know of any law in America, or the American States, which prohibits the buying of arms and bringing them into the country, and then he goes on and says, because it does not prohibit them, therefore they are free. I am very much surprized that Mr. Rufus King should come in that sort of way, and, perhaps, he may be more mistaken than he thinks, for I do not know but the King's Advocate mentioned very proper restrictions of importing arms into Great Britain; but suppose the Duke of Northumberland, standing on his great estate, says, I will import 20,000 stand of arms, I will have a park of artillery in my garden, and if you ask my intention, why I will arm all my tenants and my neighbours, and my lieutenants, but I will have no communication with the King's Minister; would not he be liable to be called upon?

I fancy his being a great man, and having great possessions and landed property, and so forth, that would not do for them; I do not say that you may not buy a quantity of fowling pieces, even a quantity of muskets, if you want them, or to buy one and twenty pieces of cannon, but here is every thing complete, and fit for immediate use, which makes another part of the suspicion. Are you to go and buy such a quantity as this, and import them without any authority but your own? He says yes; Where, then, is the sovereignty of the American States? Have they no Secretary at War? Have they no President of the Council? Shall you, a private subject, do this on no authority but your own? I say no, he is prohibited, not by America, but by what I may call the general law of nations, and my idea of sovereignty; I am sorry I am mistaken, I was in hopes the Americans were well settled, I am afraid they are not, and that this is yet a proof that they are not well confederated, and that there is not a good centre of union, and I say, without a good centre of union, not a government or army can be conducted, it is like a circle, the rays that proceed from that centre go to the circumference, and back again, and they all find the most strong repulsion or attraction, and, therefore, to say that any man can import arms into any country, of his own head, is a very strange doctrine. Another consideration is this, which I think Dr. Lawrence, in a very strong way, pointed out, and it was not denied

denied on the other side, that the French actually revoked their treaty nine days before the contract was signed with America; but what are we to contend that these arms were intended for the use of the Directory? they were not intended for the use of the present American States, with whom they mean to quarrel, whether they mean to quarrel with Vermont I do not know, whether they mean to quarrel with New York I do not know they could; the president says, that every kind of means had been taken on the part of the French Government, for a great while, to lay a stress on the neutral State, the French knew very well what they were doing, they knew very well the state of their funds in America, perhaps, if he knew that, he would never have entered into the contest, and one cannot feel otherwise than that man did, that had very great suspicions of the whole country, yet at the same time it is an affair of such consequence, and affects Mr. Allen's character very much; he certainly is a man of great consideration, and whether he meant it or no, must be left to his own breast, that four-fifths are to be paid by Mr. Allen to the French, and four-fifths are at present vested in the French Directory; but Mr. Allen says, now I have procured this evidence, I wish to have further time, if I give him further time, he ought to think it a very great indulgence by the Court, but the mode must be prescribed by the Court, which is by the act of parliament, that pleading is open to the other side, to one side as well as another,

is limited, therefore, in this case, if I give him leave, according to act of parliament, to go into further plea and proof, he ought to think it a very great indulgence; three times was he charged with his proofs, and three times was he beaten back, I will give him one more reply, let him come with that reply, and then I will give my opinion. I have spoken my mind pretty freely the other day, with respect to Masters, and though it is very proper in some cases not to give masters any thing, yet I do not say this is your case, I have no objection to her having her freight, or any thing else, but I shall not do it till I hear the case.

Dr. Nicholl.—There is an affidavit, in which he says he has no possible means of getting his ship away.

Sir James.—I do not believe that affidavit.

[ADJOURNED.]

A true copy, examined by my short-hand notes,

E. HODGSON,

*Short-hand writer to the Old Bailey eleven years,
Elim-place, Fetter-lane.*

Major EYRE'S Letter to ROBERT SLADE, Esq;

No. 8, *Duke-street, St. James's,*
16th March, 1797.

SIR,

WITHOUT any request from Ira Allen, Esq; I presume to consider it incumbent on me to acquaint you, that I was first introduced to the said Mr. Allen by the Rev. Dr. Samuel Peters, on his arrival in the city of London from North America; that I have been since oftentimes in the company of Mr. Allen, that particularly in the month, either of January or February, 1796, I dined in his company in the apartments of Dr. Peters, and other loyal subjects of the British Government; that after the cloth was removed, a variety of conversation took place, that several papers were produced, that from this and former conversations, as well as from perusing some of those papers voluntarily produced by Mr. Allen, I discovered one of his motives for coming to Europe was, to obtain an interview with His Grace the Duke of Portland, and thereat to shew a plan also, the policy which might induce His Majesty's Ministers to permit Mr. Allen to cut a canal from the State of Vermont into Lake Champlain, whereby corn and other products would be sent into Lower Canada and elsewhere, and the European and other commodities annually imported into Quebec,

Montreal, &c. might find their way into Vermont more readily than from New York.

Secondly, it appeared clearly, from sufficient documents, that Mr. Allen is an inhabitant of Vermont, (one of the United States of North America); that he is a Major General in the American army, that he had filled various offices of respectability in his native country with honour; that he possesses landed property to a very considerable amount in Vermont, part of which it was his intention to dispose of in Europe, and return to America with different commodities; that the purchase of fire-arms was one part of the articles spoken of as intended to be purchased and carried to America by General Allen.

Since that meeting, conversation, and production of papers, I heard from General Allen, that he had several interviews with his Grace of Portland, and from Dr. Peters I heard General Allen had gone to Paris, thence to Amsterdam, where he had sold some land advantageously, and with facility, and since that, from the public papers, first I found that a General Allen had been stopped on board a vessel with a cargo of fire-arms, said to be intended for Ireland, and by a letter from Dr. Peters, dated Bath, 11th March instant, he tells me of that General Allen being the person I met in his house, &c.

Under

Under all those circumstances, Sir, give me leave to add, that as I had known from hearsay and avowal, that General Allen had been in arms against the British during the American war, that as I believed him to be brave, vigilant, and enterprising; if I had discovered from his conversation or papers, materials, or a seeming disposition to commit an hostile act against his Britannic Majesty, or his subjects, it was my bounden duty, and I would immediately have communicated such information to his Majesty's Ministers, so on the contrary, as General Allen's conduct and papers were fair, undisguised, and not inimical, *least my name should be mentioned*, truth, liberality, and my honor direct me to impart to you the foregoing particulars, of which you are at liberty to make such use as may (if any does) appear necessary. Previous to sealing this, prudence and respect point out the propriety of shewing it to his Majesty's Advocate, through *his Procurator General or otherwise*; and I have the honour to be,

Sir,

Your most humble servant,

ROBERT EYRE.

As General Allen's character has been recently called in question in the preceding cause, that he may not be misunderstood by either of the belligerent powers

powers, and to shew his countrymen, as far as might be proper for an individual in a foreign land; he has endeavoured to give such information to members of the United States, as might be useful on that ground, therefore is induced to publish the four following letters, viz.

London, February 14, 1797.

SIR,

THE affairs of Europe are extremely convulsed, the French have had surprizing success in Italy, they have defeated the Emperor's army in attempting to relieve Mantua; by the French accounts, in the course of four days, they took 23,000 prisoners, 6,000 killed and wounded, 60 cannon, 24 stand of colours, the supplies for Mantua, baggage, &c. this defeat will also necessitate General Wurmser to surrender the garrison of Mantua to the French, as that garrison had not ten days provisions; the garrison consists of about 14,000 men, cannon, &c. and is one of the strongest places in Europe.

The French will immediately invade the Pope's territories, and I have reason to believe that the New England clergymen will soon be relieved from praying for the downfall of the Pope.

Two new republics are forming in Italy, which unite with the French in the prosecution of the war;
the

the Germanic body are strangely divided; the north of Germany, including the dominions of the King of Prussia, Saxony, Wurtemberg, &c. have formed an armed neutrality, the Austrian Netherlands are incorporated with France, the Austrian possessions in Italy are forming said new States, so that near half of the Germanic body have separated from the Emperor, and part are with the French fighting him; the King of England, as Elector of Hanover, pays his proportion to support said armed neutrality—but as King, subsidizes the Emperor to continue the war.

The death of the Empress of Russia has affected the politics of Europe, she was about to send 60,000 men to assist the Emperor of Germany, and her fleet to act in concert with the English. The new Emperor, Paul I. is wholly opposed to war, and will not send his fleets or armies abroad; one of the first of his acts, after ascending to the throne, was to send a courier, &c. to make peace with Persia; he is a great friend to the King of Prussia, and the Empress is sister to the Duke of Wurtemberg, who has made peace with France, and joined the armed neutrality. The Emperor of Russia appears to be a good-hearted man, endeavouring to cultivate the arts, and to make his people happy; what effect such policy will have in his extensive dominions, in the present state of Europe, time will determine.

A short

A short time past a man was brought before the inquisition of Spain, for not believing in purgatory; the holy inquisitors condemned him, he appealed, the King and the Prince of Peace (notwithstanding all the Holy Father could say) acquitted him, as being a philosopher of the present age, he might not believe in purgatory; at this the Queen was much enraged, observing, that such men were destroying all the established governments in Europe. The Bastile in Spain has been abolished for several years. The King is a quiet, good-natured man, and so was Louis XVI.

The English navy are exceeding powerful, yet they did not take the French fleet in their late visit to Ireland. I hope the United States will have too much sense to get connected with the wars of Europe, there is not a nation on earth that they can be benefitted by a war with, in the present circumstances, nor do I believe that they are benefitted by the European war so much as they would by a general peace, some few may gain, but more lose. Neutral ships are exposed to many difficulties, insurance has been raised eight per cent. on American ships, &c. as a war has been expected between France and the United States. Although the French are much dissatisfied with the late treaty between Great Britain and the United States, yet I do not give it as my opinion that they will declare war, and I think it would be the height of madness for the United States

States to declare war on France—a reconciliation will best answer both.

When I view the belligerent powers of Europe, and search out the first causes of the war, trace them with other occurrences through the changing scenes, consider the different objects that stimulate nations and individuals, see the depressed circumstances of the great body of the people, see the extension of knowledge, the gnawing frenzy of liberty, what may we expect will be the state of Europe ten years hence, if a general peace doth not soon take place?

The treaty of Pilnitz, the coalition of kings against republics, united the French people by a sense of danger, hence we must account for the armies remaining firm at their posts, through horrid scenes of blood, revolutions of parties, fall and change of councils, generals, &c. and while Mr. Pitt was expending much blood, and nearly £150,000,000 to reinstate royalty in France, in the course of Providence he operated like a guardian angel, hovering over France, uniting the people, evincing the necessity of a permanent government, and, in fact, established a republic, which is already perfecting three more sister republics in the face of all Europe.

Parliament are to meet this day, they have an important object to accomplish, if possible, *Peace*; whether there will be a change of ministers, or
what

what measures will be adopted to effect an object of all others most desirable to this country, I cannot say; I hope they may be so fortunate as to take the best method, and speedily stop the effusion of blood, restore peace to Europe, and tranquillity to foreign countries.

I have the honor to be,

Your Excellency's

Most obedient

Humble Servant,

IRA ALLEN,

His Excellency Thomas Chittenden, Esq;

London, Oct. 3, 1797.

GENTLEMEN,

In my letter of the 30th ult. I only addressed you on business, having a few moments leisure, shall make some remarks on the politics of Europe, as they may effect my native country, which, I hope, notwithstanding her complicated embarrassments, will have wisdom enough to keep out of the wars of Europe, which have a very hostile appearance since the recent revolution in France, and return of Lord Malmesbury from Lisle. There is no accounts of hostilities being recommenced between the Emperor and French, but I expect the fact doth or will soon exist. Buonaparte has an immense army
under

under his command, and also most of the resources of Italy. Should hostilities commence, the French will profit more by the truce than the Emperor, for Buonaparte was so near Vienna that he was in danger of being *Burgoyned*; he has extricated himself and army from that situation, revolutionized Venice and Genoa, consolidated the new republics of Italy, organized and disciplined new levies of troops, part of which pressed hard upon his rear when he formed the said truce. The King of Naples and the Pope have concerted measures together to keep their respective subjects in subjection, which, with other recent accounts, induces me to believe that these Governments are in danger of a revolution; at least, Buonaparte has little to fear from them, or the Grand Duke of Tuscany, so that all Italy are silenced, or assisting the French.

The Greek States on the other side the Gulph of Venice, &c. are on the point of revolting from the Turkish Empire, and establishing a republic, to effect which they have sent commissioners to concert measures with the Directory of the Cisalpine republic.

General Buonaparte has called to his assistance the members of the *ci-devant* Diet of Poland, and some officers who refused submission to the division and subjugation of their native country, which may presage some disturbance in that country.

While

While these measures have been pursuing by the French, the Emperor has reinforced his army and preparation for war in his own dominions.

Besides these matters, public entertainments have been made between French and German officers, and, consequently, free conversation; what effect such measures may have, at the present crisis, time will best discover.

I am informed that the Spanish Government have appointed the Bishop of Tolado supreme Head of the Church of Spain instead of the Pope, and abolished some of the most superstitious principles of the Popish Church; this will expand the ideas of the Spaniards on religious subjects, and why not on other matters?

This is a war of principles, and not of nations, nor doth it resemble the late wars of Europe; the revolution of France cannot be compared with any past revolution. But it surprizes all those who carefully observe its operation, and it is incumbent on the United States carefully to consult her own interest, as an independent power, for you may be assured that you have no friends in Europe but that are governed by interest or fear, but little love is lost between nations; from customs, habits, commerce, &c. Great Britain is the most natural ally of the United States, as such her interest, in concert
with

with that of the United States, is worth your attention, yet it ought not to be carried so far as to cause a war with other nations; the French ungenerously tried to bring the United States into a war, through Mr. Genet; that was avoided; should the English, in turn, try to involve the United States in war, I hope sufficient precaution may be had to prevent it; I am clearly of opinion that there is no power on earth that the United States can be benefitted by a war with. As to the French capturing our ships, different considerations have contributed to these measures, they are dissatisfied with the treaty between Great Britain and the United States; it is an object with the French to curtail the commerce of Great Britain, with it her resources for war. It has been reported that many goods were shipped by English merchants on board of American vessels, under cover, to their agents and factors in the United States, these goods, when taken and detected, are legal prizes. The United States but too easily submitted to impositions by British cruizers, which has furnished an excuse for the French; after all, do not think the French seriously contemplate a war with the United States, their object is more to injure Great Britain; I therefore hope that the Plenipotentiaries from the United States, who, I am informed, have arrived at Paris, will concert measures for accommodation.

The influence of the French has not been sufficient to establish a constitution to their wishes in the

United Provinces; it has been rejected by a large majority.

The late peace, &c. between France and Portugal has been dictated by France and Spain, injurious to Great Britain, as the ports of Portugal are in a great measure shut against the English, in virtue of which Lord St. Vincent's must, as the windy season will soon approach, abandon the blockade of Cadiz, and his fleet must depend on English ports for safety; whether this will pave the way for another expedition to Ireland, or whether the interference of the British minister will prevent its ratification and effect, time will determine.

Much might be written respecting the affairs of Europe, would time permit.

I am, &c. &c. &c.

IRA ALLEN.

ELIJAH PAIN,
ISAAC TICHENOR,
MATTHEW LYON,
LEWIS R. MORRIS, } Esquires.

London, Nov. 4, 1797.

GENTLEMEN,

In my letter of the 3d ult. I observed that public entertainments, &c. had been between French and German officers, the result is the Cifal-
pine

pine republic, or, perhaps, an extension of France on the Rhine, and the preliminaries of peace are signed between the French and Emperor, very advantageous for the republic of France.

Our Plenipotentiaries have been politely received by the French Minister in Paris; what success they meet with in their mission is not known. I am determined to consult and employ Mr. Erskine, the most famed counsellor in the kingdom, to apply to the Lord Chief Justice of Great Britain for a mandamus to cause Sir James Marriott, Judge of the High Court of Admiralty, to deliver my property on bail, which will be the first instance of the kind in the kingdom, but I find I have an explicit act of parliament in my favour, as you will see by the pamphlet you herewith receive; the printing of said pamphlet was this day accomplished, which has delayed my consulting Mr. Erskine. Lord Kenyon's Court for Michaelmas Term commences on the 10th instant, by which time I mean to be prepared, as I am determined to have my right, if there is any Court in the kingdom that will do me justice. But these exertions of mine ought to be a stimulus to the United States to demand justice for me, as I may be otherwise disappointed. I sent by Doctor Eben. Graham, by the *Star*, bound to Philadelphia, copies of all the depositions taken in the course of the cause; in the printed pamphlet I thought proper

to omit my own deposition, as I chose to support my claim by other proofs. I have no objection to said pamphlet and my letters of the 30th of September and 3d of October being published in pamphlets and every newspaper in the United States; I feel myself too much injured to be silent, for which reason I have caused 750 pamphlets to be printed. You see I am debarred the common rights of law, notwithstanding demanding it. Not the least evidence or circumstance has, or can be, produced against me; it is to be supposed that the Captors' agents have spared no pains for near twelve months to get so valuable a cargo condemned. In this I find my character, as well as property, concerned, in consequence of the misfortune of living near Lower Canada, where, I am informed, that some disturbances subsist amongst his Majesty's Canadian subjects. Is the whole Militia of Vermont to be debarred arms, &c. on that account? They are a people we have little or no connection with, yet, if the propositions I have made, respecting a canal, were adopted, we should have much property pass through Canada to Europe, to the mutual interest of Great Britain and the United States, and I think my memorials, &c. to his Grace the Duke of Portland, one of his Majesty's principal Secretaries of State, are sufficient to shew it to be my interest and wishes to support the Government of Great Britain in Canada, copies of which have been transmitted to Governor Chittenden, and an abstract thereof annexed

nexed to said pamphlet. Shou'd the people of the Counties of Washington and Clinton be disposed to unite with the State of Vermont, and the Legislature of New York consent to their separation, with a territory from the *great* bend of the North River to a small lake, then down a river into the Iroquois, about half the way from Lake Ontario to the south line of Lower Canada; the uncultivated lands might be a compensation to Vermont for the extension of her frontiers, which may be exposed to invasion in case of war. Was this change of jurisdiction determined on by the States of New York and Vermont, and ratified by Congress, I venture to say I could soon obtain an act of the Government of Great Britain for opening a canal, that would, in effect, make Lake Champlain a sea port; this would also lay a foundation for an extensive commerce and permanent friendship with Great Britain.

Contiguous to Lake Eric, in the western territory of New York, a State will be erected, with nearly similar interest, to be on friendly terms with Great Britain. These measures may tend much towards perpetual peace and friendship, so essential for the best good of society.

I have to invite your attention to these matters, and request you to consult General Williams, &c. on the subject; the sooner these measures can be accomplished the better, and I assure you that no-

thing on my part shall be wanting to accomplish a navigable canal; I should not mind another voyage to Europe, if necessary. By the enclosed correspondence with Governor Simcoe, you will see I have friends at Court, and measures of this kind will add friends, and contribute much to the interest of the people contiguous to said Lake, in the easy exports and imports by water; this would call to use iron ore, &c. You easily see the advantage that would arise to the community by such a canal. From the canals I have inspected in this kingdom, in the republics of France and Batavia, I do not, in the least, hesitate to say such a canal may be accomplished, and that there are men in Europe that would advance money to cut it, if an act could be obtained, on advantageous terms, which, with your assistance as aforesaid, may be accomplished. I think proper to give you this information, that the sense of the Legislature of New York may be had in their present session.

I shall sail for America as soon as I can get my property on bail, or otherwise.

I have the Honor to be,

Your most obedient humble servant,

IRA ALLEN.

ELIJAH PAIN,	} Esquires.
ISAAC TICHENOR,	
MATTHEW LYON,	
LEWIS R. MORRIS,	

London, December 19th, 1797.

GENTLEMEN,

As to the affairs of Europe, they are yet much convulsed. The French have made peace with all but Great Britain, and I doubt it may be difficult to accomplish that object for several reasons, a most implacable hatred appears to subsist between both nations, it may be a convenience for the French not to disband their troops at once, war with Great Britain is trifling, in comparison to what they have had to contend with, it will tend to advance their navy and consolidate their internal government, little more than the French peace establishment encamped on the coast of the English channel with frigates and privateers, committing depredations on commerce will necessitate Great Britain to be at nearly the same expence in a defensive as an offensive war, thus while they are perfecting their own government and navy, they mean to conquer Great Britain on the Stock Exchange.

It remains a question what may be the final result of the Congress at Rastadt, and the more so since the death of the King of Prussia, which may be an additional reason for not disbanding their armies at present; what success our Plenipotentiaries may have in Paris is uncertain, at the same time I am yet of opinion that their object is more against Great Britain than the United States, but the losses are serious.

D d 4

I hope

I hope that the United States will be able to keep out of the wars of Europe, and not be influenced by French or English parties, but act as independent Americans.

I have the honor to be,

Your most obedient

Humble Servant,

IRA ALLEN.

ELIJAH PAIN,
NATHANIEL CHIPMAN, } Esquires.
MATTHEW LYON,
LEWIS R. MORRIS, }

To all Merchants and Manufacturers in Great Britain, having Connections in Quebec, Montreal, New York, or Albany, and have used their influence to prevent a Ship Canal from Lake Champlain to the River St. Lawrence, and have manifested their Wishes to oppress the Claimant in this Cause, by the Detention and Condemnation of his Cargo, and other Measures, the more effectually to bar his said Object.

GENTLEMEN,

Your opposition is supposed to rest in mistaking your own interest, that of both countries, and General Allen's objects, for want of a thorough knowledge of that country, and its natural resources for commerce. The said canal would extend navigation

180 miles into a fertile country, abounding in all kinds of iron ore, suitable to make pig-iron, bar-iron, and steel, marble, white and clouded, copper and lead-mines, fir-trees*, ash, white and red oaks, cedar, and various other trees. There are also a variety of rivers, with proper falls to erect iron-founderies, refineries, saw-mills, &c. where pig and bar-iron are made; deal boards, marble slabs, &c. may be sawed by water. Masts, spars, staves, &c. furnished in abundance; of the preceding articles but little use is made for exportation. Wheat, rye, barley, Indian corn, oats, beans, pease, hemp, flax, beef, pork, butter, and cheese, are produced, in great abundance. The farmer, in clearing the timber from his lands, can furnish great supplies of charcoal to serve furnaces, refineries, &c. and furnish large quantities of ashes to make pot and pearl ashes; these articles may be furnished cheap by the farmer, which would pay him, in many instances, for clearing his lands, instead of burning the timber on the ground to clear his lands.

A ship canal would be the means of importing salt, and exporting the preceding articles cheap; the remittances that would be made on these raw materials would enable the merchant to make punctual remittances; it would draw commerce from the east, that now centers at Boston, Newbury Port, Portf-

* Pine-trees in America.

mouth,

mouth, &c. and add to the population of Lake Champlain. These measures would almost, beyond calculation, increase the commerce at both ends of said Lake, admit that heavy articles would principally pass the ship canal, yet when the reader takes into consideration the length of the river St. Lawrence, the frozen season, that goods are seldom imported but once a year to Quebec, that spring and fall shipments are seasonably made to New York, the necessity of making early remittances, &c. the proprietors of the canal from Hodson's River would be benefited by said ship canal, in consequence of the extension of business; one circumstance that would tend much to draw commerce from the east to said Lake is, that it is customary for the merchant and farmer to move most of their heavy goods and produce by sleighs, in the frozen season; that the changeable weather on the sea-coast at Boston, &c. spoils the sleigh path, so that about one journey in three are lost, while the more temperate and healthy climate of Vermont insures good sleighing for about two months.

The British merchants and manufacturers know their capitals and connexions, and that the treaty of 1794, permits them to navigate said Lake, and need not be further informed how to take the advantage of that extensive business, which is better policy than confining commerce in a narrow channel, badly calculated for the present day.

General

General Allen would, with others, in proportion to the property he owns contiguous to said Lake, be benefited by its rise in value, in consequence of said canal. He would accomplish an object he has been in pursuit of ever since the close of the American war. This is no more than pursuing the objects commenced in early life, to make a country populous, to which he marked and cut a road seventy miles through a wilderness to commence settlements.

Since his arrival in Europe he has visited France and Holland, after which established his mercantile connections in Great Britain, as thinking them most advantageous, not personally to enlarge business, but that he might, to better advantage, put into the care of young men, who have had proper instructions in business, the care of certain estates, iron-foundries, mills, &c. with a capital for prosecuting said mercantile establishments, that he might retire from private business, to such circumstances as might await him.

General Allen had an ambition to furnish the Militia of Vermont with arms, &c. that they might make a respectable appearance on field days, do honor to their country, and be protectors of its rights.

General Allen flatters himself that his objects in said ship canal, with leave to pass Quebec with the shipping

shipping of Vermont, would be satisfactory to the people of his native country, &c. as he solicited no special favor for himself, and that such canal would be reciprocally beneficial to the mercantile interest of Great Britain, as that of the United States, and establish a permanent friendship between the two countries, which is more fully explained in pages 104, 105, and 106.

Sir William Scott, in the course of his plea on the 12th of December, 1797, in page 161 and 162, says, that the Claimant, from the 5th of July to December, made no motion to the Court to discharge the obligation the Court had laid him under, which warranted the Captors to move for condemnation; the reader is requested to read General Allen's letter of the 10th of July, in page 96, in which the Claimant acquits himself of any delays, &c. on his part, and further, to evince the utmost liberality and fairness, he offered to sell his cargo, or assign it to the Governor of New York, to distribute to the Militia of the States of Vermont and New York, so as only to supply their deficiencies, which, in the phrase of a learned Judge, was going a great length in favour of accommodation, and which matter was repeatedly argued before the Court by the Claimant's council, as going far beyond the act of parliament for the satisfaction of the British Government.

By

By examining page 112 and 113, it will appear that the Claimant's Council and Proctor were repeatedly moving the Court to deliver the property on bail, and were encouraged so to do by the Proctor for the Captors, and their agent, which, by subsequent transactions, appears too much like a trick to gain time, accumulate costs, and make a plausible pretence for a speedy decision. Had the property been delivered on bail, agreeable to an act of the wise Legislature of Great Britain, it would probably have ended the dispute, for the reasons given in His Excellency Rufus King's letter to Lord Grenville, in page 101.

When the Judge for a moment admits the facts stated in this cause to be true, he puts a final stop in page 185, viz. "It cannot be admitted by any law political," by this and the preceding arguments, on doubts and suspicion, the Claimant learns that the Council for the Captors, and Judge, have been necessitated, for want of proof, to imagine a law political, on which his property is condemned, which he thinks is as unprecedented in this kingdom as his cargo was supposed to be.

In the course of Sir William Scott's pleas, he sets up targets to shoot at, and then argues the cause hypothetically, without the least regard to evidence, facts, or fairness, his pleas are a mere jargon of fruitful imagination, in the course of which it appears
unfortu-

unfortunate, that the Claimant is neighbour to the Canadas, for by that he loses his inherent right of a natural citizen of the United States, his character injured, his property condemned, and the Militia of Vermont deprived of arms, because the State is bounded on a British colony. Sir William ought to remember that Vermont is not Ireland, that it grew and waxed strong when most oppressed, that this may awaken the departed spirits of Allen, Warner, and Barker, to hover over Vermont, illuminate and invigorate the Veterans, and stimulate the rising heroes to redress the insults and wrongs of their injured General.

He then imagines a correspondence between General Allen and the French Government, and assumes to say, page 166, "that they would be under the necessity of proving all the papers which passed between him and the French Government, and that they should be produced, for undoubtedly those must have been in his possession." That General Allen was in possession of clear and authentic documents to prove his property* and contracts with the French Government are true; they were found on board the ship Olive Branch, in the course of Captain Gould's search, under the signature and seal of Mr. Petiet, Minister at War of the French Government, and the signature and seal of General Allen, stated to be

* See page 79.

at the request of the Governor of Vermont, which contracts were closed on the 11th of July, 1796; on the 13th, while General Allen was with Mr. Monro, Minister of the United States, in Paris, conversing on the subject of said contract, dispatches arrived from America, announcing the final ratification of the treaty between Great Britain and the United States. General Allen, on his return to his lodgings, fell in with General Clarke, in the course of conversation that circumstance was mentioned, which was (as General Clarke then observed) the first information of the ratification of said treaty by Congress.

With respect to an arrête of the French Directory for taking American ships, so often mentioned by Dr. Lawrence, in the course of his pleas, as having passed nine days before General Allen's contract, it is no more to him than the blindness of a kitten till nine days old. It was not known even to the Minister of the United States, nor acted on by the French Government, till by instructions some months after that, and then there is reason to suppose that the main object was to injure the commerce of Great Britain, to lessen her resources for war, so that the United States seem to be losers on both sides.

The King's Advocate must have undoubtedly forgot, when he asserts, "for undoubtedly those must have been in his possession," that he and the Captors were the instigators of a most scrupulous search of
said

said ship and cargo, breaking locks and seals, inspecting every paper, and taking every one that respected the ship or cargo, discharging the cargo, opening every box of muskets, searching the calibre of 15,000 muskets, with iron ramrods, 21 field pieces, the straw boxes, &c. in which they were stowed, every hole and corner of the ship, and even undressing a doll, exposing her nakedness to seamen, &c. as she was born of the mantuamaker, to find his imaginary correspondence without effect. Some secret service money has likely been spent in France; a revolution has taken place there; two of the Executive Directory, who had access to all public records, have left France. Mr. M. went to America, near twelve months since, charged with special enquiries. Mr. G. has recently visited France. Mr. B. has been stationary and incessant; but at this long elapse of time nothing appears against the claim of General Allen, except some vague conjectures of scurrility in the newspapers of the two hemispheres, which probably originated from the causes alluded to.

As to Mr. B. and Mr. G. being informers at His Grace the D . . . of P office, a few remarks may not be improper; the preceding affidavits sufficiently shew, that Mr. G. was knowing to Governor Chittenden's giving general Allen a written request, and sufficient authority to purchase arms, and other implements of war in Europe, for the use of the Militia of Vermont, and that Mr. G. knew
of

*B. is Bowbanks
G. — Graham
M. — Munk house*

of General Allen's intentions to purchase arms for said Militia* *both in America, during the passage, and in Europe.* It is known that Mr. G. contended with General Allen to be in partnership in said purchase; it is known that General Allen supposed before he left America, that he could purchase English arms in France cheaper than in England, as they would there be considered second-hand arms, and the caliber not suitable to the French cartridge, but that those arms exactly answered the laws of the United States, consequently they would be saleable there. It was the opinion of many men of respectability in America, that there would be a general peace in Europe soon after General Allen arrived there, or at least in the Spring of 1796; with this information was it hard for Mr. B. and Mr. G. to form conjectures that would for a time tend to prejudice the rulers and subjects of Great Britain against General Allen. Considering the peculiar circumstances of the belligerent powers, are there not strong circumstances if not evidence to shew that others are to share with the Captors in case of final condemnation? In what light then ought the Citizens of America to view and treat Mr. B. Mr. G. and Mr. M? Doth not the whole conduct of Mr. G. in Europe point him out to be a mere ? What then can be said of his colleague Mr. B.?

In what light will the Government of Great Britain view f . . . s and inf s who hatch up

* See page 19, sixteenth line.

stories for private emolument, the effects of which may tend to set two friendly countries at variance, as the cargo of the Olive Branch affects the interest and ambition of the military men of Vermont and a part of a neighbouring State on the confines of Canada, where mutual good offices ought to preserve friendship between the two countries, who from ties of consanguinity, speaking the same language, custom, habits, manners, commerce, &c. seems to make them the natural allies of each other.

As to Mr. B. his zeal for the cause of his country, bad advice, and misinformation may have led him astray, and as the claimant in this cause was born of christian parents and baptized in the church, he is disposed, in imitation of his Lord and Master, to extend mercy on unfeigned repentance, he therefore takes this method to advise his christian friend, on his bended knees to ask pardon of God, the Church of Hackney, His Grace the Duke of Portland, and General Allen, in hopes that he may yet find forgiveness, as a repenting sinner may be pardoned seventy times seven.

That after all the honourable Gentleman has said respecting the obligation the Claimant was under to produce satisfactory proof, he classes his pleas in an extraordinary manner in page 166, viz. "and further that it is not that case to which evidence can be adduced, giving you, by cross-examination, that conviction

viction which you are entitled to, before you can
 consent to the restoration of this cargo." Was it pos-
 sible to suppose that the candour of his Majesty's
 Advocate in the High Court of Admiralty of Great
 Britain could have been surpris'd into such twistical
 assertions? to want proof and yet no proof could be
 satisfactory, the cause having been thus pre-judged,
 when, perhaps, no cause was ever brought before a
 Court of Admiralty with that perspicuity and publi-
 city as this was; the arming the Militia of Vermont
 has for five years past been a matter of legislative in-
 quiry, and the mission of General Allen on the sub-
 ject was publicly known in America, in Great Bri-
 tain and in France, and affidavits adduced to prove
 every part of the transaction, sanctioned with the
 affidavit of the late Governor Chittenden, who was
 a man of that respectability that he was annually eigh-
 teen times elected by the free suffrages of the people,
 to be Governor of the State of Vermont. This
 mode of the honourable Gentleman's reasoning ill
 applies to the present enlightened age, but might have
 served at the time of the Salim Witchcraft, when a
 man was accused of being a Wizard he was com-
 pelled to climb a tall tree, and being confined to the
 top, the tree was then cut down, if he survived the
 fall he was a Wizard indeed, and must be instantly
 hanged.

In the course of the pleas of the Counsel for the
 Captors, they seem to lay much stress on their remarks,

that this was a new case, that there were no precedents of the kind,* “such a cargo as never was heard of since the opening of Pandora’s box in the world.” Admit for a moment that this is a new case, that cannot alter the justness of the claim, especially if we reflect that the people of Vermont have been famous for setting important precedents that have been followed by men of the first honors in the present age. The people of the district of the New Hampshire Grants, alias Vermont, were the first in America that governed themselves by Committees of Safety and Conventions, which measures they adopted against the arbitrary power of the late colony of New York, about eight years before the American war, when their example was followed by the thirteen provinces, now United States of America. Colonel Ethan Allen with about 200 green-mountain boys, with small arms, took the first offensive part and garrisons from Great Britain, in the American war, on the 8th of May, 1775, they took Ticandaraga and Crown-point, then proceeded and took St. John’s, an armed sloop of 16 guns, in all about 90 prisoners, about 300 pieces of cannon and mortars, shot, shells, &c. in the course of three days.

The people of Vermont confiscated and sold the property of those who joined the enemy of their country first of any of the States, and then applied the avails to raise men for common defence.

The people of Vermont projected a plan, and by the assistance of General Starkes, &c. cut off the first wing of General Burgoyne's menacing and powerful army, and were further active as appears by a clause in his letter to Lord George Germain, to this effect. The district of the New Hampshire Grants, a wilderness little known in the last war, now abounds with the most active and hardy race on the Continent, who hang like a gathering storm, ready to burst on my left.

Vermont was the first that made peace with Great Britain, three years before the close of the American war, hostilities virtually ceased between them.

Vermont was the first State that admitted those who had, in the course of the war, been active against the States, to settle in its Territory, become Members of its Legislature, Judges, &c.

Vermont was the first State that came into Union with the Thirteen United States.

Vermont was the first State that sent to Europe for a supply of arms for her Militia, but four of the United States have individually followed her example, viz. New Hampshire, New York, Pennsylvania, and Virginia. It would be good policy for all the United States to supply their Militia with arms, provide a competent State store of arms and ammunition,
keep

keep up and support a good discipline amongst their Militia, thereby, if possible, to preserve the blessings of peace.

The Legislature of the United States have in a recent session in Philadelphia, been so fully convinced of the necessity of military stores being imported into the United States, that they have, for an encouragement, taken off a duty of 15 per cent. on all that may be imported before the first of May next; this is with a witness supporting the enterprize of Vermont, and establishing her precedent and foresight in applying to Europe for arms and the want of military stores throughout the United States,

It appears that five of the United States have individually applied to Europe for the purchase of arms, amongst which is the State of Pennsylvania by the Governor thereof, whose seat in Philadelphia is but a few rods from that of the President of the United States, yet he with others supposed that the authority of one of the United States was sufficient to purchase arms in Europe to supply its Militia. After perusing these facts will any one suppose the United States are one and indivisible like France, or that it is necessary for a man to be a locksmith to purchase arms? The law of the United States, in page 88, sufficiently shews the manner of arming the Militia thereof, while the learned Counsel for the Captors have so extensive a fund of knowledge

knowledge of the law of nations, and law political, that they may still be further perfect, they would do well to study the constitution and laws of the United States (which, by treaties, commerce, &c. seem to be allied to Great Britain) when they will perceive that a Government constituted by the free voice of the people, the legislators and officers whereof are frequently elected, and its military force consist in a well regulated Militia (including all males from 16 to 45, a few exceptions only) that Government have nothing to fear from its Militia, who are a band of brothers, to protect a Government they have an interest in supporting against foreign invasion, &c. and who have no pay to accumulate taxes, unless called into actual service; under these circumstances arms and military stores are free merchandize, so that any who have property and chuse to sport with it, may turn their gardens into parks of artillery, and their store-houses into arsenals, without danger to Government.

The emblem of a tree which recently surprised a learned Judge, was planted by the late Ethan Allen, Seth Warner, Remember Baker, &c. about the year 1770. It was watered, pruned, &c. by the late Thomas Chittenden, Stephen Fay, Herman Allen, &c. It was supported by a Washington, Montgomery, Green, and the heroes of 1775. It was protected by Hancock, Jay, Adams, and many renowned senators: The seed from whence this tree sprung may be likened

likened unto the Mustard-seed which grew and flourished so that the bows thereof afforded shelter to the souls of Heaven, and it is hoped that it will yield fruit spontaneously in America till time is no more.

On hearing the remarks made by Sir James Marriott, Judge of the High Court of Admiralty of Great Britain, on the 13th of June and subsequent Court days, including the 12th of December, 1797, in the cause of the cargo of the ship Olive Branch, the Claimant has been truly surprised he was born a subject of Great Britain, and had been taught from his infancy that Courts of Justice were governed by law and evidence, that the greatest candour, order and decorum was observed by the Judges of the Courts in the Kingdom of Great Britain.

It is very unpleasant for a stranger to be insulted before a Court where he cannot speak in his own defence, without being exposed to be confined for contempt of Court.

The proceedings of the Court, as are recorded in page 184 to page 193, will shew to a discerning mind that comments are unnecessary.

The candid reader is invited to take a retrospective view then suppose a judge *solemnly sworn to do equal justice to all men, according to Law and Evidence*, then judge for himself whose conscience may be most surprised.

Question.

Question. When a cause in the Court of Admiralty is by the Judge ordered to Plea and Proof, and the Judge refuses to deliver the property on bail, and rejects the allegations of Plea and Proof, when legally laid before the Court, and the Judge then proceeds to condemn the property, (while the cause is lying before the Court of King's Bench, for a mandamus to require said Judge of the Admiralty to deliver said property on bail, according to act of Parliament) apparently to defeat the suit pending in the Court of King's Bench (to which he had joined issue, by moving that the Rule of the Court of King's Bench might be extended) and disappoint the Claimant of his legal right of receiving his property on bail, is not such proceedings and determinations of the Admiralty Judge mal-administration, according to the Laws and Acts of Parliament of Great Britain? If such conduct and determination of a Judge of Admiralty be repugnant to the good and wholesome Laws of Great Britain, the Legislature may cheaper dispose of such superannuated Judge than by giving him a Pension equal to his present salary, with an Irish Peerage.

THE END.

ERRATA.

Page 7, line 26, for 160,240 livres, read 106,240.

47, — 15, for August, read September last.

74, — 15, for David Gould, read Davidge Gould.

83, — 11, for 160,240 livres, read 106,240.

98, --- 6, for went, read meant to purchase.

103, line 1, for property; if liberated, read property it liberated.

140, --- 11, for 160,240 livres, read 106,240.

152, — 3, for layed, read Slade.

164, — 13, for paroll, read parole.

165, last line, for States, read State.

195, line 9, for cured, read barred.

198, last line but one, for Secretaries, read Senators.

221, line 2, for French, read English.

252, line 18, for taken, read talking.

239, — 6, for John, read Jesse.

275, — 7 and 11, for those arms, read his lands.

280, — 17, for France, read America.

281, — 26, for 20,000, read 120,000.

282, — 10, for sending, read selling.

—, — 19, for 50,000, read 5000.

285, — 11, for Europe, read America.

—, — 23, for request, read right.

291, — 6, for Colonel Graham, read Major Graham.

—, — 8, for General Stoddart, read General Spafford.

—, — 9, for General Hartwell, read General Cogswell.

292, — 16, for 50,000, read 5000.

293, — 13, for Dr. Peters, read Mr. Thorne.

—, — 17, for he was able, read he was not able.

—, — 21, for Mr. Jesse Foot, read Mr. Jesse Putman.

—, last line, for Mr. Knap, read Mr. Phelps.

294, line 5, for Layton Smith, read Nathan Smith.

314, — 24, for Mr. Cottrell, read Mr. Phelps.

328, --- 15, for a letter, read an affidavit.

—, — 17, for December, read November.

—, — 20, for General Stoddart, read General Spafford.

329, — 17, for do. read do.

330, — 18, for do. read do.

331, — 26, for do. read do.

344, — 22, for this part, read his part.

345, — 19, for Mr. Johnson, read Mr. Scott.

350, --- 1, for array, read arrête.


----, --- 26, for array, read arrête.

358, --- 18, for Stoddard, read Spafford.

385, --- 8, for uncultivated, read unlocated.

398, --- 25, for classes, read closes.

404, --- 3, for souls, read fowls.

 The Reader is requested to observe, that the above numerous Errata was principally occasioned by the Counsel not recollecting the names of the Witnesses, &c. &c.

